161-370

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 370.

HARVEY SPALDING, JAMES H. SPALDING, [illegible] SPALDING, JOSEPH C. JOHNSON, [illegible] BURGH, APPELLANTS,

vs.

GEORGE MASON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF [illegible]

FILED OCTOBER 8, 1894.

(14,679.)

this Court in this case. Therefore the plaintiff in error prays that the said cause may be advanced and set for oral argument at such time as the convenience of the Court at this term may determine.

It may be further stated that five different parties are named as parties in interest in this case, and that counsel for these parties regard the questions involved as of sufficient importance to justify them in asking this Court for an oral argument, during this term of the Court.

GEORGE A. SANDERS,

Attorney for Plaintiff in Error LUTHER R. GRAVES.

161 US 375

161-375

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~313~~. 55

HARVEY SPALDING, JAMES H. SPALDING, EDWIN W. SPALDING, JOSEPH C. JOHNSON, AND JULIUS LANSBURGH, APPELLANTS,

vs.

GEORGE MASON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 6, 1891.

(14,879.)

(14,879.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 313.

HARVEY SPALDING, JAMES H. SPALDING, EDWIN W. SPALDING, JOSEPH C. JOHNSON, AND JULIUS LANSBURGH, APPELLANTS,

vs.

GEORGE MASON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 5, 1895.

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1 *Bill of Complaint.*

Filed Oct. 22, 1887.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } Equity. No. 10830, Docket 27.

To the supreme court of the District of Columbia, holding an equity court:

The complainant states as follows:

First. The complainant and defendant are both citizens of the United States and residents of the District of Columbia, and the complainant sues and the defendant is sued each in his own right.

Second. That the said defendant for considerable time prior to June, 1880, had been engaged in the prosecution of claims of postmasters and late postmasters of the United States for adjustment of their salaries in conformity to section 8 of the act of Congress of June 12th, 1866; that in June, 1880, the said defendant was in need of money to use in the prosecution of said business and, in order to obtain from the complainant the sum of twenty-five hundred dollars ($2,500 00), represented to complainant that the amount of the claims of postmasters and late postmasters properly payable
2 under and pursuant to the provisions of the eighth section of said act of Congress amounted to two millions of dollars ($2,000.000.00); that there were eight or ten thousand claimants; that he had in his hands for prosecution and collection between sixteen and seventeen hundred of these claims and within two or three months he could secure fifteen hundred more and one thousand in addition within a year; and he further represented to complainant that he could easily control four thousand of these claims, in value about one million dollars, upon agreed fees equal to twenty-five per cent. (25%); that the claims he then had in hand were in value about $500,000, and the fees agreed upon were twenty-five per cent.; and the said defendant offered and proposed to complainant, for the sum of twenty-five hundred dollars, to sell and assign to him absolutely one-fourth of all the fees in the said claim in his hands and one-fourth of all he could thereafter secure (the fee agreed upon to be not less than twenty-five per cent. in every case), the complainant to be wholly free from all expense of conduction — the business, and that the complainant should receive, free from all charges, one-fourth of each and every fee on each and every claim then in hand or thereafter secured by defendant.

3 Third. The complainant, after due consideration of the defendant's proposition and relying upon the integrity of the defendant and upon his skill and ability in the prosecution of this class of claims and believing in the validity and justness of the claims, and that they would eventually be paid, determined to aid

him in the manner he desired by paying him the sum of twenty-five hundred dollars and taking an assignment of one-fourth of the fees contracted for by him in the cases he had in hand and such as he might hereafter secure. Accordingly, on the third day of June, 1880, the complainant and defendant made and executed a contract in writing, under their respective hands and seals, which contract is in words and figures following, to wit:

Harvey Spalding and George Mason, both of Washington city, in the District of Columbia, mutually covenant and agree with each other as follows:

Harvey Spalding, having for several years been engaged in the prosecution of claims of postmasters and late postmasters for adjustment of their salaries in conformity to section eight of the act of June 12, 1866, and a large number of said claims now in hand, to wit, seventeen hundred or thereabouts, and being now engaged in the prosecution of said claims and in receiving for prosecution other similar claims, of which he expects to secure in the aggregate,
4 including those in hand, about four thousand in number, more or less, upon agreed fees equal to twenty-five per cent. of the amount which shall be collected in each case, and having secured the passage by the Senate of Senate bill 903, Exhibit No. 1, this Congress, and the favorable report of House bill 3981, Exhibit No. 2, by the proper committee of the House of Representatives, which bills propose a basis for the settlement of the claims herein referred to and the substance of which he expects to be enacted into law, and being in need of funds to conduct his said business to completion, hereby agrees to sell to said George Mason one-fourth of all his interest in said claims now in hand and all that he may hereafter secure and one-fourth of all his fees therein, free from all charges for expense in prosecuting said claims to collection thereof, for the sum of twenty-five hundred dollars. The said interest and share in said claims and fees shall vest in said Mason on payment by him of said purchase-money, and a *pro rata* proportion of said interest and share shall vest in said Mason on payment of each instalment of said purchase-money as hereinafter provided.

The said Mason shall pay the purchase-money to the said Spalding as follows:

5 He shall pay the sum of one hundred dollars on signing this contract and a further sum of one hundred dollars on or before the 12th day of June instant. He shall pay a further sum of three hundred dollars on or before the 5th day of July prox. and a further sum of seven hundred and fifty dollars on or before the 5th day of October next. He shall pay a further sum of six hundred dollars on or before the 5th day of November next and a final payment of six hundred and fifty dollars on or before the 5th day of December next.

It is further agreed that a due proportion of all the powers of attorney and contracts for fees to cover the interest of said Mason shall be transferred to him by said Spalding by proper endorsements of substitution on the powers of attorney and assignments

endorsed upon the contracts, and said fees may be collected by the said Mason and an account thereof shall be kept, and all the fees collected by the said Spalding shall be accounted for and settlements shall be made from time to time as collections are made, and
6 a division thereof shall be made, three-fourths going to said Spalding and one-fourth to said Mason, and all the records of claims and powers of attorney and contracts shall at all times be open to the examination of said Mason. The said Harvey Spalding agrees and binds himself to obtain all the claims of the class named he can and to make contracts for fees equal to twenty-five per cent. of the collections and to subject the whole to be shared together with those in hand by said George Mason for the consideration hereinbefore specified.

And the said George Mason agrees and binds himself to pay over to the said Harvey Spalding the whole amount of said sum of twenty-five hundred dollars within the time and in instalments as hereinbefore specified, unless he shall elect to pay the whole of said sum within a shorter period than the time named.

In witness whereof the said parties have hereunto set their hands and seals this third day of June, A. D. one thousand eight hundred and eighty.

HARVEY SPALDING. [SEAL.]
GEO. MASON. [SEAL.]

7 Upon which contract are the following endorsements:

Received, Washington, D. C., June 3d, 1880, one hundred dollars on this contract.

HARVEY SPALDING.

WASHINGTON, D. C., *Febr'y* 21, 1881.

I hereby acknowledge to have received the am't in full agreed upon to be paid me in this contract by George Mason, viz., twenty-five hundred dollars.

HARVEY SPALDING.

Fourth. Said contract was executed in duplicate and one part thereof was delivered to complainant and the other part thereof to the defendant, and the complainant afterwards paid to the defendant the entire sum of twenty-five hundred dollars ($2,500) therein mentioned, and the receipt thereof was acknowledged by the defendant by written endorsement signed by him on the contract held by complainant, which contract, with the endorsement thereon, will be produced by complainant whenever it may be required.

Fifth. That at the time said contract was made the Senate of the United States had passed a bill requiring the Postmaster General to readjust the salaries of certain postmasters in accordance with the provisions of section eight of the act of June 12, 1866, being
8 Senate bill No. 903 of the Forty-sixth Congress, second session, and a similar bill was pending before the House of Representatives, being House bill 3981 of said session, which had been

favorably reported by the House Committee on Post Offices and Post Roads. Complainant will file herewith a copy of each of said bills, and he prays that they may be read and considered as a part of this bill. Said bills are the same that are mentioned in the said contract between the complainant and defendant. Neither of said bills passed during the said session of the 46th Congress. The 47th Congress passed an act, which was approved by the President and became a law on the 3d day of March, 1883, Exhibit No. 3, which was exactly the same as House bill 3981, above mentioned, except two unimportant verbal alterations, with a proviso added as to the manner of application for readjustment of salaries thereunder and the manner of payment thereof. A copy of the act of Congress of March 3d, 1883, will be filed herewith, and complainant prays that it may be read and considered as a part of this bill

9 Sixth. That a considerable time after the making of said contract the defendant represented to complainant that his expense in procuring said claims and preparing them for readjustment was very great, and the delay in the execution of the act of 1866 was so much greater than he had anticipated that he was very much pressed for money and desired complainant to assist him to obtain money for the expenses of his business, and the complainant from time to time during the years 1881 and 1882, at the urgent solicitation of the defendant, although under no legal obligation whatever to do so, advanced and paid to him divers sums of money, amounting in all to fifteen hundred and ten dollars and eighty-one cents ($1,510.81), which, according to complainant's recollection and belief, were mostly, if not wholly, advanced and paid to defendant upon account of the expenses of prosecuting said claims.

Seventh. And the complainant also during the years 1883 and 1884, at the request of the defendant and upon his representation that he was in great need of money to pay the expenses of prosecuting said claims, loaned him other sums of money, amount-

10 ing in all to $800.00, for which complainant took and now holds the defendant's five several notes, two for the sum of $250.00 each and three for $100.00 each.

Eighth. That under and pursuant to the act of Congress of March 3d, 1883, the defendant, as attorney for the applicants, made application to the Postmaster General for the readjustment of the salaries of a very large number of postmasters and late postmasters and obtained such readjustment of their salaries, showing balances to be due to said postmasters and late postmasters so represented by him amounting in the aggregate to a very large sum of money, but the number of the salaries so readjusted and the amount found due to each of the claimants so represented by the defendant complainant does not know, and he has no means of ascertaining except by and through the said defendant.

Ninth. That the method of settlement and payment of the claims of postmasters and late postmasters under and pursuant to the act of March 3d, 1883, is as follows: The Postmaster General,

11 after readjusting the salaries of claimants, reports and certifies to Congress from time to time the amount found due to

each applicant, and an appropriation for the payment of the aggregate of the amounts so certified to be due to claimants is thereupon made by Congress, and the amount due each claimant is then paid by check or warrant on the United States Treasurer, payable to the order of the applicant and forwarded by mail to him.

Tenth. That there has been appropriated by Congress and disbursed in payment of said claims so allowed and certified by the Postmaster General the following sums:

Under act of July 7th, 1884.....	$45,213 80
Under act of March 3d, 1885.....	178,481 23
Under act of August 4th, 1886.....	392,394 44

And complainant is informed and believes and he so avers the fact to be that in addition to those claims already allowed and paid as aforesaid there have been adjusted and allowed claims amounting in the aggregate to upwards of $500,000.00 under said act of Congress of March 3d, 1883, and he believes that at the next ensuing session of Congress, in due course of business, a sum of
12 money will be appropriated sufficient to pay not only all such claims as have been allowed and remain unpaid but all such claims which may be allowed up to the time of the passage of such appropriation bill, which, according to the best information complainant can obtain, he believes will make the aggregate to be appropriated for by the next Congress about $600,000.00; and he is further informed and believes that the last-named sum will nearly, if not quite, cover all such claims as have been or are likely to be allowed and paid under said act of March 3d, 1883, according to the construction of the law adopted and heretofore acted upon by the Postmaster General in readjusting the salaries of postmasters and late postmasters in accordance with section eight of the act of June 12th, 1866; but should the construction of the law as contended for by the defendant ultimately prevail, then a very much larger number of claimants would be let in to enjoy the benefits of said acts of Congress and much larger sums of money would have to be appropriated for the payment thereof.

13 Eleventh. The complainant further says that the defendant, after making the contract aforesaid with the complainant, procured a very large number of claims of postmasters and late postmasters for readjustment of salaries under the laws aforesaid, in addition to the claims which he had theretofore secured upon agreed fees, equal to twenty-five per centum of such claims, as by his said contract with complainant he agreed to do, and that he has prosecuted very many of such claims to a successful termination and procured the payment thereof, and that in most of the cases which have been paid and in which the defendant had contracts for fees with the claimants he has received from the complainants his fees for services as agreed upon, to wit, twenty-five per centum of such allowances paid to each and every claimant.

Twelfth. But complainant is not informed and cannot state what sum or sums of money the defendant has been paid as fees in the

cases that have been adjusted and paid or what claims the
14 defendant now has which have not been paid, because such information is within the possession of the defendant alone, and he has failed and refused to give the complainant any definite information in relation thereto. Upon information and belief, however, complainant alleges that the fees received by the defendant in the cases already adjusted and paid amount to over ninety thousand dollars ($90,000), and that he still has in hand claims which are properly payable under said act of Congress, as construed by the Postmaster General, in which he will be entitled to fees amounting to about one hundred thousand dollars ($100,000), in addition to the sums he has already received.

Thirteenth. The complainant further states that a due proportion of the powers of attorney and contracts for fees in the various cases secured by the defendant as aforesaid to cover the interest of complainant has never been transferred to him by the defendant by substitution endorsed upon the powers of attorney or assignments endorsed upon the fee contracts, as in and by said contract of June 3d, 1880, was agreed between complainant and defendant,
15 nor has complainant been substituted as attorney in any of said cases, nor have any of said fee contracts been assigned to him by endorsement thereon, but each and all of said fee contracts and powers of attorney in the cases remaining unsettled are, as complainant believes, in the possession of the defendant.

Fourteenth. Complainant further says that there has been no settlement of any or either of the matters or things in this bill mentioned between the complainant and defendant; that complainant has collected or received no part of the fees in any of the said cases, and the defendant has never rendered any account or statement of any kind to complainant of the fees which have been received by him in said cases, but has failed and refused to make any such statement. After each of the three several appropriations was made for the payment of these claims, the defendant told complainant about the sum collected by him as fees from the claims paid out of each appropriation, and the defendant has from time to time, at the request of complainant, paid him divers sums of money on account of the transactions hereinbefore stated, the aggregate of all said payments amounting, according to the best knowledge,
16 information, and belief of complainant, to a sum not exceeding twenty-five hundred dollars ($2,500); that complainant has applied sufficient of said money so paid to him to discharge the loans amounting to $800, evidence- by the five notes of the defendant hereinbefore mentioned, which leaves, as he believes, a balance of about seventeen hundred dollars ($1,700) to be applied as a credit on complainant's share of the fees secured to him by his contract with the defendant, and complainant verily believes the defendant is entitled to no other or greater credit thereon; that the defendant has put off and delayed making a settlement with complainant upon the ground that he was in great need of money, and complainant did not think strange of such delay until since the last appropriation was made by Congress for the payment of said

claims, out of which the defendant realized a large sum of money as fees in said cases, but since said last appropriation complainant has urged the defendant to make a settlement with complainant and to pay to him the portion of said fees which, by the said contract with defendant, he is entitled to;
17 and now, to complainant's great surprise, the defendant denies the right of complainant to share the fees in the cases so prosecuted by the defendant and allowed and paid under and pursuant to the said act of March 3d, 1883, according to the said contract between complainant and defendant, and claims that the said contract covers only a small number of the cases which have been so allowed and paid, without specifying what cases he admits it to cover, and refuses to inform the complainant what fees he has collected from the several claimants whose claims have been allowed and paid as aforesaid.

Fifteenth. Complainant says that under and by virtue of his said contract with the defendant he believes he is justly and legally entitled to recover from the defendant, at the least, the sum of twenty thousand dollars ($20,000) after deducting all credits to which the defendant is entitled, and that complainant is also justly and legally entitled to receive one-fourth of each and every fee which the defendant may be entitled to in all those claims of postmasters and late postmasters with whom the defendant has contracts for
18 fees whose claims may be paid under and pursuant to the said act of Congress of March 3d, 1883. Complainant has no means of ascertaining the exact sum now due him under and by virtue of said contract with the defendant, nor the sums that may hereafter become due him under said contracts except by a discovery from the defendant, who alone has the necessary information from which the account can be correctly stated; and complainant has no security for the payment of the money due him and to become due him by virtue of said contract, except the security provided for in the contract itself, viz., the assignment of a due proportion of the fee contracts and his substitution for the defendant in a due proportion of the powers of attorney.

Prayers.

Complainant therefore prays:

First. That the said Harvey Spalding may be made defendant hereto and required to answer fully each and every allegation of this bill.

19 Second. That he may be required especially to answer fully and set forth and disclose the following matters and things, to wit:

1st. How many and what applications he has made as an attorney for the claimants for the readjustment of their salaries of postmasters and late postmasters under the act of March 3d, 1883, and the name and post-office address of each of said claimants.

2d. How many and which of said claims have been rejected by the Postmaster General, and how many and which of said claims

have been allowed, and the amount found due each claimant and the amount that has been paid to each claimant.

3d. What was the fee contracted for by him in each and every case, and the sum or sums received by him as a fee in each and every case that has been paid, and in what cases that have been allowed and paid the fee contracted for remains unpaid in whole or in part.

Third. And the further prayer of complainant is that the power of attorney of the claimant to the defendant and the fee contract in each and every claim remaining unpaid may be brought
20 into court by the defendant, and that the defendant may be required to assign to complainant sufficient of said contracts to secure to him the payment of complainant's portion of the fees in all of the cases aforesaid, including paid and unpaid claims, and that complainant be substituted as attorney for the claimants in the said cases in which the fee contracts are assigned to him.

Fourth. That an account may be stated between complainant and defendant to ascertain the amount due complainant under and by virtue of his said contract with the defendant on account of fees that have been or that may hereafter be collected in said claims by the defendant, and that complainant may have a decree against the defendant for such amount.

Fifth. That a receiver may be appointed to take charge of all fee contracts between the defendant and the claimants in all cases in which the fees have not been collected by the defendant, and collect all fees in said cases remaining unpaid.

21 Sixth. That the defendant, his agents, servants, and attorneys, may be enjoined and restrained from collecting or receiving the fees or any of them or any part thereof remaining unpaid in any of said cases.

Seventh. That complainant may have such other, further, and general relief as to equity appertains and the court may see fit to grant.

Eighth. And may subpœna issue to the defendant requiring him to answer the exigency of this bill.

The only defendant hereto is Harvey Spalding.

GEO. MASON.

COLE & COLE,
Solicitors for Complainant.

22 I, George Mason, do solemnly swear that I am the complainant named in the foregoing bill of complaint; that I have read said bill and know the contents thereof; that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

GEO. MASON.

Subscribed and sworn to before me this 22d day of October, A. D. 1887.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

EXHIBIT No. 1 TO BILL, 10830, EQ.

Filed Oct. 22, 1887. R. J. Meigs, clerk.

46TH CONGRESS, 2d Session. } { S. 903. (Report No. 60.)

In the Senate of the United States.

DECEMBER 18, 1879.

Mr. Bailey, from the Committee on Post Offices and Post Roads, submitted a report (No. 60), accompanied by the following
23 bill, which was read the first and second times by unanimous consent:

A bill authorizing and directing the Postmaster General to readjust the salaries of certain postmasters, in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made direct official application or sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General,
24 such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such application or sworn returns of receipts and business was made.

EXHIBIT No. 2 TO BILL, 10830, EQ.

Filed Oct. 22, 1887. R. J. Meigs, clerk.

46TH CONGRESS, 2d *Session.* } H. R. 3981. (Report No. 167.)

In the House of Representatives.

JANUARY 28, 1880.

Read twice, committed to the Committee of the Whole House, and ordered to be printed.

Mr. Stone, from the Committee on *the* Post Office- and Post Roads, reported the following bill as a substitute for H. Res. 27:

A bill authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made direct official application or sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster general, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four; such readjustment to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the quarter succeeding that in which such application, sworn returns of receipts and business, or quarterly returns were made.

EXHIBIT No. 3 TO BILL, 10830, EQ.

Filed Oct. 22, 1887. R. J. Meigs, clerk.

Postmasters' Salaries.

Construction of the act March 3, 1883.

The honorable the Attorney General.

SIR: On the 3d of March, 1883, the following remedial statute became a law:

(Public, No. 58.)

An act authorizing and directing the Postmaster General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen
26 hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made sworn returns of receipts and business for readjustment of salary to the Postmaster General, the First Assistant Postmaster General, or the Third Assistant Postmaster General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four; such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to
27 date from the beginning of the quarter succeeding that in which such sworn returns of receipts and business, or quarterly returns, were made: Provided, that every readjusment of salary under this act shall be upon a written application signed by the postmaster or late postmaster *of* legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post office within whose delivery he resides, and which address shall be set forth in the application above provided for.

Approved March 3, 1883.

Since then considerable discussion has been had in the Post Office Department as to its construction. This discussion was not expected, because the law in its own terms describes the wrong a remedy for which is its sole and manifest purpose.

The wrong is the allowance of salaries to 3d, 4th, and 5th class postmasters ten per cent. less than the commissions and the non-adjustments of such salaries so as to equal the commissions, as provided by the old law of June 12, 1866.

28 The remedy is an adjustment of such salaries now so as to equal such commissions, excluding the first quarter, showing deficiency from the benefit of the act. No less remedy than this can under the terms of the act be granted, and the law forbids restricted meaning to be given to the terms of remedial statutes. On the contrary, if necessary to accomplish the remedy in view, the terms of the law may lawfully be enlarged and extended so as to accomplish perfectly the purpose of the statute. Nothing extraneous to this statute can lawfully be resorted to to limit or restrain this remedy of equalizing salaries with the commissions. There is nothing in the terms of the statute limiting the readjustments provided for to prospective readjustments and no warrant within the law or outside of it for transferring readjustments from the returns showing deficiency in pay to another period after or previous to the period of such returns. Any efforts of this sort are branded by law as odious, and it is, indeed, odious to restrict or defeat wholly or in part a remedial statute by construction based upon extraneous considerations. Is it not obviously just that postmasters shall have salaries equal to the commissions when commissions are the

29 sole basis of all salaries, and shall not such salaries be accorded to them in compliance with the mandate of Congress twice issued?

Under such circumstances attempts to restrict or prevent the full application of the remedy provided by this law are against all reason and all law. In the Post Office Department the act of June 12, 1866, has been set up to control and limit the act of March 3, 1883.

The act while in force was construed by the Postmaster General then in office, and salaries were readjusted and made equal to commissions upon prior returns, the additional salary allowed appearing not upon the returns, but as a credit in the general account. It is for this reason that the provision "whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six," is inserted in the act of March 3, 1883. In all prospective readjustments the increased salary was shown upon the returns themselves; hence the necessity to look beyond the returns for the retrospective readjustments made under act of June 12, 1866.

30 The only construction of the act of June 12, 1866, which suggests any limitation of that actually made by the Postmaster General is that in the dicta of the Supreme Court in McLean's case, in which all readjustments of salaries are spoken of as taking effect prospectively. Whether taking effect prospectively or otherwise was not material in that case, for the point decided was that the Postmaster General's readjustment "was an executive act, made necessary by law in order to perfect any liability of the Government." But if readjustments under act of June 12, 1866, must

take effect prospectively, "the readjustments must have been made immediately on the receipt of the returns," to take effect from the beginning of the quarter next succeeding.

If, in fact, the remedy given by the act of June 12, 1866, was limited in any way, such limitation cannot be applied to the act of March 3, 1883, and no limitation not clearly expressed in the act of March 3, 1883, can be applied to the remedy for which it provides.

The letter of the act of July 1, 1864, may have required the assignment of salaries at biennial readjustments for the period then in the future equal to the average of the commissions for the
31 two prior years; yet if the Postmaster General had done this and the commissions had largely fallen off, it would have clearly been his duty under his discretionary authority to have reduced the salary so as to conform to the decreased commissions. There are probably exceeding ten thousand cases where at one biennial readjustment the salaries allowed, being upon one quarter's returns after the business had fallen off, were far below the average of the prior two years' commissions, and there were a large number of like cases at every biennial readjustment, and not one of these parties ever thought of alleging error or making a claim on that account. All claims have been made upon the sole ground that the salaries allowed were less than the commissions, as shown by the returns.

And yet this order of the Postmaster General of June 9, 1883, construing the act of March 3, 1883, as construed by the clerk in charge, proposes no readjustments equalizing the salary with the commissions, but proposes to make the salaries for two years after each biennial readjustment equal to the average of commissions for the two prior years where the salary allowed at such bien-
32 nial readjustments was ten per cent. less than the average of the commissions for the two prior years.

Assuming that the letter of the act July 1st, 1864, had been followed in the biennial readjustments, this construction would be properly illustrated as follows: If in computing the salary of a postmaster it results that two hundred dollars added to two hundred dollars make two hundred dollars, then such postmaster shall have another two hundred dollars; but applying it to the actual facts of record in the department, it is correctly illustrated as follows: If the commissions of a postmaster so rapidly increased that they amounted to $560, while the salary allowed was but $7, he shall have nothing under this law, although his case was the basis of all proceedings responsive to which the law was passed; but if the commissions of a postmaster have as rapidly decreased from $560 to $7, he shall have, although he never asked for it and never had any legal or equitable grounds for asking, $553 salary, now allowed in excess of his commissions. It is not surprising that the assistant attorney general for the Post Office Department, upon an examination of the law, should have come to a different conclusion,
33 nor that some months should have elapsed before carrying into execution such a construction of law as this, nor that

the Postmaster General concluded to ask the construction of the law by the attorney general before proceeding to make readjustments of salaries of the character described.

The people who in this law have remedy for wrongs most unjustly suffered are counted by some thousands. They have been adjudged worthy to hold offices of trust and responsibility. By consideration of good faith and common honesty, as well as of the integrity of the laws, they are entitled to prompt and fair consideration and to immediate enforcement of the rights secured to them by this second command of Congress on their behalf.

My prayer to the attorney general is that he will measure to these people the full remedy given them by the terms of this law and its necessary implications.

And this prayer is also the command of the law.

In his keeping the rights of the people and the integrity of the laws must be sacredly secure.

Respectfully submitted.

HARVEY SPALDING,
59 Corcoran Building.

Washington, D. C., Sept. 1, 1883.

34 GEORGE MASON *vs.* HARVEY SPALDING. } No. 10830, Equity Docket 27.

Spa. to Ans. Original Bill.

In the Supreme Court of the District of Columbia, October 22d, 1887.

GEORGE MASON, Complainant, *against* HARVEY SPALDING, Defendant. } No. 10830, Equity Docket 27.

The President of the United States to Harvey Spalding (C., Oct. 22, '87, McDernitt), defendant:

You are hereby commanded to appear in this court at the first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

35 Equity. 10830.

GEORGE MASON
vs.
HARVEY SPALDING. } 10830, Eq. Doc. 27.

Answer of Harvey Spalding.

Filed Dec. 6, 1887. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } Equity. No. 10830.

The answer of Harvey Spalding to the bill of complaint of George Mason saith:

1. The statements of said bill numbered first are true.

2. It is true that in June, 1880, this defendant, ever since the year 1871, had been laboring in various ways and at much expense to establish the claims of postmasters therein mentioned.

It is also true that about June 1st, 1880, this defendant, being in great need of money for expenses in connection with that business, made application therefor to the complainant. As ground of that application this defendant explained to the complainant his whole business situation and prospects in the above relation.

36 Amongst other things he referred to the probability that one or other of two bills then pending in Congress and bearing upon that business would be enacted, to wit, that Senate bill 903 had already passed the Senate, whilst House bill 3981 had received a favorable report from the appropriate committee. At the same time the difference in provision by those bills was discussed, and that Senate bill 903, which made provision for fewer postmasters than House bill 3981 did, was at the same time, from its situation upon the calendar, more likely to be enacted; and this defendant then stated to the complainant that in the course of the nine years for which he had been engaged in that business he had prepared lists of the names of some 7,500 postmasters who, he was satisfied, would in part or all be included in the provisions of such bills, and also that of these about 1,700 had already duly authorized him to prosecute such claims as their attorney, with a stipulated compensation equal to 25 per cent. of what should be recovered, whilst he had good grounds to believe that in the end he would be so authorized by some 4,000 of these.

37 In the course of the same application it was said and understood between the parties that the classes of postmasters included in the bills and previous legislation would be paid the difference between the amounts of any salary which during a particular period they might already have received and the amount

of such commissions as but for legislation in 1864 and after they would substantially during the same period have received, and it was also then distinctly stated to the complainant by this defendant that it was upon this understanding and theory that the latter had made up the lists aforesaid, as well as had taken the powers of attorney and formed exceptions as to the number of clients whom in the end he might procure, as above stated.

And this defendant thus told the complainant that under the narrower relief of Senate bill 903, which seemed also, as above stated, the more likely of the two to become a law, he estimated that the whole amount of claims that probably he might collect would be worth about $75,000 and his own fees, consequently, about $18,750, whereas if House bill 3981 were enacted
38 those amounts would be respectively about $400,000 and $100,000.

Upon the above basis of probable legislation and business this defendant offered to sell to the complainant one-fourth part of his own interest in the 1,700 claims then in hand and also the 4,000 which he hoped and would bind himself to endeavor to procure for the price of $2,500, the complainant farther to be at no expense in the prosecution thereof and to have such security for his interest in the claims as would be given him by a transfer of one-fourth part of the powers of attorney and contracts for fees.

After some discussion and calculation of probable results such offer was accepted, and thereupon afterwards the complainant reduced the same to form in his own handwriting, and it was duly executed by both parties in duplicate.

All allegations under title second not here admitted are denied.

3. The execution of the contract mentioned under title 3rd is admitted.

39 4. The statement- under title fourth in regard to payment of the $2,500 are admitted.

5. This defendant also admits the pendency and failure of the two bills, except that it is an error that Senate bill 903 was a bill of the second session.

He says that neither of said bills contained any part of the provision included in the proviso of the act of March 3rd, 1883.

6. This defendant saith that after the two bills above mentioned had gone over as unfinished business to the second session of the forty-sixth Congress and upon the 17th of January, 1881, House bill 3981 was defeated in the House by such a vote and upon such grounds as, together with the low place which Senate bill 903 then occupied upon the calendar of the House, took away all hope of other such legislation by that Congress. The complainant and this defendant were both present upon that occasion. During the afternoon of the same day, this defendant being in his office, in the Corcoran building, the complainant came in, and after talking
40 about the above event urged this defendant to go on in renewing efforts before the next Congress. This defendant was then, after ten years of unsuccessful labor, without hope, and thereupon replied that he had already done all he could with such

business and could do no more. To this the complainant cordially assented, but still urged his above suggestion. In the farther course of the conversation this defendant added, as another reason for abandoning the business, that he had exhausted his means; and thereupon the complainant promised expressly that if this defendant would proceed in said business he himself would share in all the expenses thereabouts. This conversation ended in an agreement upon the same day betwixt the complainant and this defendant that the former would supply money, as aforesaid, and that in consideration thereof the latter would prosecute the business as suggested.

Relying upon this contract, this defendant proceeded to promote further legislation in the Forty-seventh Congress to secure
41 other clients, as had been agreed in June, 1880, and prepare to prosecute farther such business. To this work he gave his attention for much the larger part of the next two years, down to the enactment of the statute of March 3rd, 1883, and during that time and in that business for expenses in paying clerks, rent of office, printing, stationery, and other matters this defendant paid out some $4,500.

In the same connection, at various times in 1881 and up to September, 1882, this defendant made repeated demands upon the complainant for money as a contribution towards said expenses under the contract of January 17th, 1881, but, excepting as to a few small sums, amounting in all, as this defendant believes and says, to less than $200, the complainant refused to comply. Thereupon, after several such demands and refusals and remonstrances, this defendant, in September, 1882, notified the complainant that such noncompliance with his contract had given to this defendant a right to put an end to the agreement, and that he did then so put an end to it, and should proceed thereafter to conduct the business upon his own account, but that in consideration of
42 the $2,500 and other advances as above stated this defendant in case of success in such business as aforesaid would pay him $10,000. Accordingly since September, 1882, this defendant has conducted such business upon that footing. He has since made no application to the defendant for advances under the agreement of January, 1881, but when in need of money for such business has applied to him, as he has to other third persons, for loans; also whatever money this defendant has paid to the complainant out of his receipts in such business he has paid upon the footing of the transaction of September, 1882, in repayment of the $2,500 and other advances as above.

In regard to the $1,510.61 which the complainant alleges he advanced for the expenses of the above business, although, as he says, under no legal obligation whatever, this defendant denies that it or any considerable part of it was advanced for such expenses, and he says that with an exception of a small amount thereof paid by the said complainant, as hereinabove stated, under the contract
43 of January 17th, 1881, the $1,510.61 mentioned, or whatever part thereof may be well founded in that respect, represents

certain temporary accommodations of those which by check or otherwise this defendant says that the complainant and he have been in the habit, both before and since that time, of interchanging, and he saith that the sum of such accommodations upon the part of this defendant to the complainant during the same period was $1,266.11.

All matter contained under title sixth other than as above admitted is denied.

7. This defendant admits that in 1883 and 1884 he did borrow of the complainant the amount mentioned in title seventh, which amount subsequently was repaid, as admitted by the bill under title fourteenth. This defendant says that during the same period within which this money was borrowed—that is, from the 3rd of March, 1883, to the 1st of September, 1884—the expenses incurred by himself in prosecuting claims included in the 4,000 above mentioned amounted to more than $5,000.

44 8. This defendant admits the truth of the statements as regards the presentation of claims by this defendant.

9. He also admits the truth of those as to the manner of settlement and payment.

10. The allegations entitled tenth, being in regard to public law or to matters obviously beyond the knowledge of this defendant, it is assumed that no answer thereto is expected.

11. This defendant says that besides the 1,700 claims in his hands upon the 3rd of June, 1880, he had received by the 17th of January, 1881, some 500; and also between the latter date and March 3rd, 1883, he had procured enough more of these to make in all 4,208, all of these being included in the list of 7,500 first above mentioned.

Farther answering, this defendant saith that in administering the act of March 3rd, 1883, the Postmaster General, in May, 1883, announced a construction thereof and of the act of 1866, referred to therein, which contradicted the construction assumed as above by the parties thereto as a basis of the contract of 1883 and

45 by this defendant in making up the list of 7,500 cases aforesaid. By this construction of the Postmaster General the ten per cent. increase mentioned in said statute did not mean such increase within any one quarter of the year, and therefore did not authorize an addition to compensation either in such quarter or in the quarter succeeding that, but meant such increase through a biennial term of quarters, and that it authorized such additional compensation in any case only for the succeeding biennial term. In February, 1884, this construction was concurred in by the Attorney General. One effect thereof has been to defeat much the larger part of the 1,700 claims and claimants aforesaid, and also much the larger part of the 4,208. Another effect has been to substitute for this class of defeated claims and claimants a much larger number of others entirely different in title and in person, being such indeed as theretofore, so far as this defendant is informed, had not been thought of.

This defendant earnestly contested the considerations which

46 pointed to the above-mentioned construction, both before

the Postmaster General and afterwards before the Attorney General. Nevertheless, in July, 1883, apprehending that such construction might become final, he, for the first time, began to adapt his business thereto and to correspond with persons who might probably be included within its benefits. Gradually this new class of business increased, and upon the whole this defendant has received for prosecution about 20,000 cases of postmasters other than any who were upon his list in June, 1880, or who had been by him thought of as having claims under the act aforesaid at any time before the month of May, 1883.

The allegations under the title of eleventh not here admitted are denied.

12. This defendant denies that the complainant is entitled to an account of all the business done by the defendant under the act of 1883 aforesaid, and this for the reason that, as aforesaid, the former has no interest in much the larger part of that business, whilst as regards that part of which he may have a right to an account
47 for the purpose of recovering the $10,000 above mentioned or to recover any other amount to which he may be entitled—that is, the part made up by the 4,208 cases aforesaid—this defendant says that no account thereof has ever been demanded of him by the complainant.

All statements under title twelfth not herein admitted are denied.

13. This defendant says that within the month of June, 1880, and about one week after the execution of the contract of that date this defendant voluntarily offered to the complainant to transfer to him under said contract one-fourth part of the powers of attorney and contracts for fees in the cases then in hand, being about 1,700, and that the complainant refused to receive them, and he also saith that at no time, whether before or since such offer, has the said complainant made any demand upon this defendant for a transfer to him of any of the powers of attorney or contracts for fees by him now claimed.

All statements under title thirteenth not herein admitted are denied.

48 14. This defendant admits that the complainant has collected no part of the fees in said cases, and that he himself has rendered to the complainant no account of the fees which by himself have been collected. His reasons therefor have been already stated. This defendant also denies that any account of any sort was ever asked from him by the complainant until during the month of August last. He also denies that he himself since September, 1882, has treated with the complainant about said business or made payments of money to him from receipts therein or done anything else except upon the footing thereabouts set forth hereinabove under title sixth.

All statements entitled fourteenth except herein admitted are denied.

15. This defendant says that upon the 4,208 claims aforesaid this defendant has up to the present time collected for fees $36,169.75, and that owing to the change as aforesaid in the previous method

of collecting fees made by the act of 1883, as well as to certain circulars thereunder issued by the Postmaster General, he has
49 been put to an expense of about ten per cent. to collect such fees after the allowances had been made in respect of which these were due. Of the above $36,169.75 the sum of $13,349.31 was collected from allowances upon the 1,700 cases first above mentioned and $6,014.19 in respect to the 500 cases, more or less, obtained for collection by this defendant betwixt June 3rd, 1880, and Jan'y 17, 1881, and the rest, viz., $16,806.25, upon the rest of the 4,208 cases aforesaid; and he says that out of allowances among these 4,208 cases which have also been paid to the respective claimants he has, because of the act of 1883 and circulars by the department aforesaid, failed to recover fees to the amount of some $4,000, and this under circumstances which render the latter now desperate and worthless. He also says that upon cases amongst the 4,208 aforesaid there has been farther allowed by the Post Office Department, but not yet appropriated for by Congress, enough to warrant $10,790.78 of other fees or fees that upon his past experience as above in making collections will probably net him some
50 $8,500.00. This defendant believes and says that after the allowances upon which these latter fees are due shall have been paid no more money will be coming to any of the 4,208 claimants under the above construction of the act of 1883. He denies that excepting what may be due to the complainant upon the above statement after deducting therefrom what he has already received thereabouts any debt is or will at any time be due to the said complainant by this defendant because of the contract of June 3rd, 1880, and subsequent dealings betwixt the parties thereto.

And this defendant submits to an account in regard to the 4,208 cases.

And having as above made full answer, &c., this defendant asks to be hence discharged, &c.

HARVEY SPALDING.

UNITED STATES OF AMERICA, }
District of Columbia. }

Harvey Spalding maketh oath that the allegations in the above answer made as of his own knowledge are true; the rest he believes to be true.

HARVEY SPALDING.

Sworn to and subscribed before the undersigned upon this sixth day of December, A. D. 1887.

WM. K. ELLIS,
Notary Public.

51 MASON v. SPALDING. } Eq. No. 10830.

Exceptions of the Compl't to Answer of the Def't for Insufficiency.

Filed Dec. 9, 1887. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia

GEORGE MASON vs. HARVEY SPALDING. } Equity. No. 10830.

Exceptions taken by the above-named complainant to the answer of the defendant for insufficiency.

First. For that the said defendant has not in and by his answer, according to the best of his knowledge, remembrance, information, and belief, answered and set forth how many or what applications he made, as attorney for the claimant, for readjustment of salaries of postmasters and late postmasters under the act of Congress of March 3rd, 1883, nor has he stated the name or given the post-office address of each or of any of said claimants.

52 Second. For that the defendant has not in and by his said answer, in manner aforesaid, answered and set forth how many or which of said claims have been rejected by the Postmaster General, or how many or which of said claims have been allowed; nor has he answered what sum has been found due each of said claimants or the amount that has been paid to each of said claimants.

Third. For that the defendant has not, in and by his said answer, in manner aforesaid, answered and set forth what fee was contracted for by him in each of said cases, or the sum received by him as a fee in each or all of said claims that have been paid, nor has he answered what fees remain unpaid in whole or in part from claimants whose claims have been allowed and paid under the act of March 3rd, 1883.

In all or some of said particulars the said plaintiff is advised that the said answer of the defendant is evasive and insufficient, and ought to be amended, and he humbly prays that the same may be amended accordingly.

COLE & COLE,
Sols. for Compl't.

53 MASON v. SPALDING. } Eq. No. 10830.

Order Sustaining Exceptions to Def't's Answer.

M. 26, p. 456, 2 N.

Filed Jan. 10, 1888. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE MASON vs. HARVEY SPALDING. } Equity. No. 10830.

This cause came on at the present term to be heard upon exceptions of the complainant to the defendant's answer to the bill of complaint and was argued by counsel; upon consideration whereof it is, this 10th day of January, 1888, ordered by the court that the said exceptions and each of them be, and they are hereby, allowed and sustained, and that the defendant do put in a full and sufficient answer to said bill of complaint within ten days from this date, and that informant pay the costs thereof.

WM. M. MERRICK, *A. J.*

54 MASON v. SPALDING. } Eq. No. 10830.

Additional Answer of the Def't Spalding.

In the Supreme Court of the District of Columbia.

GEORGE MASON vs. HARVEY SPALDING. } Equity. No. 10830.

The further answer of Harvey Spalding to the bill of complaint of George Mason saith:

15. He submits herewith schedules of theclaims by him prosecuted under the act of June 12, 1866, as above mentioned, as follows:

Schedule A contains an account of the 4,208 cases in this answer above mentioned, showing in two subdivisions that of these cases 3,781 were received by this defendant as attorney for the claimants themselves, whilst 427 of them were received from
55 S. W. Strong, then of Pontiac, Illinois, and C. L. Kurtz, then of Athens, Ohio, who were themselves the attorneys for the claimants, and who employed this defendant to represent themselves upon an agreed compensation of 16⅔ per cent. of the amounts which

should be recovered. This defendant had made every effort to secure these claims directly from the claimants, but without success. Of the 3,781 cases first mentioned 1,085, amounting to 150,090.79, have been "allowed and paid," and 304, amounting to $36,462.40, have been "allowed," but are yet unpaid; upon these 3,781 cases 976 fees, amounting to $32,071.27, have been paid, whilst $9,114.31 will be due upon claims as yet only "allowed;" upon the 427 cases 179 have been "allowed and paid," and upon these has been paid to this defendant in fees $3,400.64, while 34 have been "allowed," but are yet unpaid, and upon these will be due for fees $737.49.

Schedule B contains an account of the "about 20,000" cases in this answer originally mentioned, showing, as above, that of these 18,817 were received from the claimants and 1,234 from the
56 above-named attorneys of claimants after unsuccessful efforts to secure them for himself as above. Of the first subdivision of these claims have been "allowed and paid" 3,068, amounting to $236,139.64; "allowed" only 7,551, amounting to $388,311.75; whilst 2,688 fees have been "paid," amounting to $48,591.90, and $95,921.65 in fees will be due upon claims as yet only "allowed." Of the second subdivision 713 claims have been "allowed and paid," whilst for his services in prosecuting them this defendant has received in fees $5,926.20, and fees amounting to $1,557.97 will be due upon 120 claims of this subdivision which as yet have only been "allowed."

In this way it appears that the aggregate of cases of all sorts by this defendant received is 24,259, the aggregate of cases "allowed and paid," 5,045, and of cases "allowed" only, 8,009, whilst the aggregate amount of fees "received" is $89,990.10, and of fees to be due upon cases as yet only "allowed" $107,331.42.

The expenditures incurred and paid by the defendant in
57 clerk hire, printing, office rent, postage, discounts, interest, &c., in prosecuting the above business since the 17 of January, 1881, are as follows:

Upon the 4,208 up to March 3, 1883, as above stated, $4,500.

Upon the whole number from March 3, 1883, to December 31, 1883, $7,125.11.

Upon the same from December 31, 1883, to December 31, 1884, $11,744.22.

Upon the same from December 31, 1884, to December 31, 1885, $10,856.25.

Upon the same from December 31, 1885, to December 31, 1886, $21,494.78.

Upon the same from December 31, 1886, to December 31, 1887, $8,827.39.

Or, in the aggregate, since January 17, 1881, to December 31, 1887, the expenditures as above, including as well the $5,000 as the $4,500 in the original answer mentioned, have been $64,547.75.

This statement does not include the ten per cent. expended as in the original answer stated to collect fees that had been earned.

This defendant saith that, believing as he did that the plaintiff had no interest in any other claims than a part of the 7,500 first

above mentioned, he entered no regular account of his ex-
58 penditures as above, especially of those connected with the claims contained in Schedule B above. His present statement of such expenditures is based upon written receipts and upon facts otherwise satisfactorily recovered. The items of postage are estimates made upon statistics of his correspondence, and they are stated somewhat below what is believed to be true.

He also saith that the unusual expenditures during the year 1886 above appearing are due to the passage of the act of August 4 of that year, which limited the time after which claims were not to be put on file to the close of that year. Thereupon the defendant greatly increased his efforts to secure claims, and consequently greatly increased the expenses of his office in the same connection.

Of the amounts so received by this defendant he has paid to the plaintiff, as is shown by memoranda in his possession, upon account of the loan of $2,500 in question as well as that of $800 above mentioned, as follows:

In the year 1884 the sum of	$500
In the year 1885 the sum of	390
And in 1886 and 1887 the sum of	2,420
Or in all as above	$3,310

59 Of which $2,510 was upon account of the loan of the $2,500 in question.

This defendant has at his office, in the Corcoran building, in this city, many account books, ledgers, &c., which contain a record of his transactions in the business above mentioned, and besides the above a large number of jackets for papers, endorsed with the names of claimants and with other transactions in that business. These run back until the year 1872. All such books, jackets, and other papers connected with said business this defendant hereby offers to the free inspection and examination of the plaintiff and his attorneys at that office during the business hours of every day, with the liberty to take whatever extracts therefrom he may be advised to be important for his interests in this case.

This further answer having been made after a more extended and laborious examination of his business than this defendant was advised to be necessary in preparing his original answer, its statements are submitted to the court as containing a closer approximation to the state of his business in question than appears in the former.

HARVEY SPALDING.

IN THE DISTRICT OF COLUMBIA, }
Washington City. }

60 Before me, upon this the 9 day of February, 1888, came Harvey Spalding, to me well known, and made oath that the contents of the above further answer by him, including Schedules A and B thereto annexed, are true.

RUFUS H. THAYER,
Notary Public.

61

EXHIBIT A.

Filed Feb. 10, '88.

Tabulated Statement Exhibiting the Whole Business of Harvey Spalding Prior to March 3, 1883, in Securing, Prosecuting, and Collecting Postmasters' Claims Listed in His Office June 1, 1880.

	Total number of claims.	Number of claims not allowed.	Number of claims allowed and paid.	Amount of claims allowed and paid.	Number of fees paid.	Amount of fees paid.	Number of claims allowed.	Amount of claims allowed and unpaid.	Amount of fees on allowed unpaid claims.
Alabama	92	62	30	$3,153 83	21	$418 88			
Arkansas	83	55	9	1,399 20	9	346 91	19	$2,483 18	$614 50
Arizona	2	1	1	103 54	1	25 88			
California	121	93	14	2,752 92	14	683 10	14	803 93	200 94
Colorado	25	18	7	395 91	2	23 91			
Connecticut	67	37	19	2,770 45	19	687 75	11	1,407 68	350 90
Dakota	10	9	1	57 85	1	12 96			
Delaware	12	9	3	295 46	3	73 85	.....	3	
Florida	27	20	5	1,821 61	4	388 09	2	375 17	93 79
Georgia	91	71	9	1,163 35	9	265 17	11	1,024 05	255 98
Idaho	0								
Illinois	252	143	69	13,127 61	65	2,839 92	40	5,747 94	1,441 79
Indiana	105	42	51	6,348 55	45	1,373 57	12	1,232 23	295 07
Iowa	255	156	81	9,528 20	70	2,181 46	18	1,727 55	431 85
Kansas	167	134	20	1,776 94	17	392 34	13	828 94	207 16
Kentucky	70	42	17	3,262 96	15	767 70	11	2,329 13	582 26
Louisiana	42	33	8	892 09	7	194 74	1	431 80	107 95
Maine	68	32	29	2,796 13	28	665 62	7	327 42	81 83
Maryland	52	31	15	3,213 59	13	789 53	6	277 44	69 34
Massachusetts	104	58	31	6,911 99	30	1,620 06	15	1,275 08	318 73
Michigan	183	126	35	3,515 82	35	798 06	22	2,681 19	670 26
Minnesota	117	79	25	2,474 72	25	589 08	13	806 95	199 74
Mississippi	61	42	10	1,760 91	8	382 65	9	1,349 06	587 25
Missouri	252	171	51	6,462 21	48	1,357 16	30	3,514 44	872 78
Montana	9	9							
62 Nebraska	65	51	12	531 98	12	132 10	2	474 56	118 63
Nevada	14	12	2	104 86	2	26 23			
New Hampshire	34	17	16	1,599 63	15	386 28	1	38 02	9 50
New Jersey	98	66	28	3,904 75	27	960 16	4	1,722 20	430 54
New York	261	128	113	16,618 00	111	3,814 38	20	3,594 25	921 02
North Carolina	68	44	23	2,309 27	19	333 01	1	35 55	8 89
Ohio	153	74	75	13,660 96	64	2,276 81	4	267 47	66 85
New Mexico	10	8	2	90 63	2	22 65			
Oregon	26	16	4	257 68	3	36 92	6	214 97	53 74
Pennsylvania	142	85	52	8,509 28	46	1,723 08	5	915 56	228 88
Rhode Island	11	8	3	666 28	3	165 81			
South Carolina	48	39	9	1,045 32	7	206 28			
Tennessee	82	64	18	1,984 88	13	294 34			
Texas	128	90	38	5,813 17	28	1,111 26			
Utah	29	21	2	96 31	2	23 78	6	322 50	80 61
Vermont	33	19	14	1,849 73	14	460 15			
Virginia	131	82	48	4,485 7	40	973 62	1	54 14	13 53
Washington	10	8	2	371 74	2	76 94			
West Virginia	42	24	18	2,877 94	19	577 40			
Wisconsin	120	55	65	7,362 43	57	1,577 09			
Wyoming	9	8	1	54 35	1	13 59			
Grand total	3,781	2,392	1,085	$150,090 79	976	$32,071 27	304	$36,462 40	$9,114 31

Expenses charged to this business $12,707.12 after Jan. 17, 1881.

			Strong's and Kurtz' cases. Paid me for my services.					
	427	214	179	3,400 64	.....	34	.....	$737 49

63 EXHIBIT B.

Filed Feb'y 9, 1888.

Tabulated Statement Exhibiting that Portion of the Business of Harvey Spalding in Securing, Prosecuting, and Collecting Postmasters' Claims which He Originated and Carried on Subsequent to March 3, '83.

	Total number of claims	Number of claims not allowed.	Number of claims allowed & paid.	Amount of claims allowed and paid.	Number of fees paid.	Amount of fees paid.	Number of claims allowed and unpaid.	Amount of claims allowed and unpaid.	Amount of fees on allowed unpaid claims.
Alabama	305	220	25	$1,745 00	25	$404 64	60	$4,133 75	$1,028 96
Arkansas	154	126	.....	.....	.....	.....	28	7,815 96	453 89
Arizona	6	6							
California	271	187	6	525 10	6	114 95	78	4,756 32	1,188 91
Colorado	44	33	3	65 18	3	16 29	8	556 42	139 08
Connecticut	293	152	17	1,355 56	17	321 94	124	10,991 84	2,694 27
Dakota	12	9	.....	.....	.....	.....	3	96 47	24 11
Delaware	61	29	.....	.....	.....	.....	32	1,631 27	407 74
Florida	66	61	.....	.....	.....	.....	5	232 22	58 04
Georgia	121	68	1	78 96	1	13 16	52	3,222 26	805 42
Idaho	5	5							
Illinois	1,334	641	89	6,985 83	86	1,594 19	604	35,265 09	8,687 63
Indiana	1,542	470	73	5,147 60	69	1,233 98	799	40,758 85	10,165 13
Iowa	788	293	47	2,938 71	44	654 14	448	21,108 59	4,962 24
Kansas	208	139	5	433 12	5	88 80	64	3,132 46	753 00
Kentucky	542	99	12	697 84	11	102 77	331	16,050 75	3,977 12
Louisiana	178	155	1	630 40	1	157 60	22	1,394 22	348 50
Maine	526	184	20	1,359 86	16	280 04	322	14,996 35	3,768 20
Maryland	342	144	20	3,699 91	20	821 07	178	9,049 53	2,252 78
Massachusetts	427	185	30	4,516 41	28	973 87	212	19,574 26	4,864 39
Michigan	751	328	40	3,789 93	37	775 62	383	18,436 10	4,607 57
Minnesota	324	147	21	1,277 57	20	273 95	156	6,945 80	1,734 30
Mississippi	118	69	7	650 60	7	161 26	42	2,783 20	694 20
Missouri	711	323	56	5,262 60	53	1,182 61	332	17,114 96	4,273 54
Montana	15	13	1	59 07	1	14 07			
64 Nebraska	138	104	10	1,495 23	9	284 27	24	767 94	192 20
Nevada	27	18	3	838 30	3	203 78	6	507 95	126 97
New Hampshire	285	132	36	2,212 23	36	537 02	117	6,771 74	1,692 57
New Jersey	394	171	36	2,262 22	36	529 45	187	9,811 99	2,471 21
New York	2,362	858	466	40,700 83	431	9,278 29	1,038	50,783 76	12,546 42
North Carolina	257	127	26	1,397 33	22	284 28	104	3,244 10	810 73
Ohio	1,350	504	431	39,438 59	362	7,198 56	595	24,515 57	6,112 91
New Mexico	14	12	.....	.....	.....	.....	2	204 30	58 57
Oregon	95	66	1	47 69	1	11 92	28	1,544 14	385 98
Pennsylvania	2,096	891	650	40,724 50	534	7,681 19	555	27,122 58	6,695 83
Rhode Island	71	23	17	2,018 59	15	442 09	31	2,619 12	654 69
South Carolina	109	82	9	1,197 88	7	221 38	18	1,467 60	365 86
Tennessee	291	156	42	5,092 83	38	1,088 12	93	4,103 95	1,022 25
Texas	218	131	30	2,145 86	24	437 44	57	3,127 70	781 82
Utah	68	43	14	370 93	11	75 30	11	221 73	55 40
Vermont	315	128	114	8,977 38	99	1,965 21	73	4,673 93	1,168 32
Virginia	410	164	167	9,383 52	132	1,694 67	79	3,026 66	756 51
Washington	26	18	5	279 34	3	69 62	5	337 31	84 32
West Virginia	377	130	153	15,052 69	129	2,871 16	94	3,479 54	869 70
Wisconsin	786	250	385	21,147 07	345	4,477 05	151	5,933 47	1,480 37
Wyoming	4	3	1	227 8	1	56 84			
Grand totals	18,817	8,197	3,068	$236,139 64	2,688	$48,591 99	7,551	$388,311 75	$95,921 65

Expenses charged to this business, $51,839.52.

Strong's and Kurtz' Cases.

						Paid for my service.			To be paid for my service.
	1,234	401	713			$5,926 20	120	$9,947 81	$1,557 97

65–68 *Replication to Def't's Answer.*

Filed Feb. 10, 1888.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } Equity. No. 10830.

The complainant hereby joins issue with the defendant.

COLE & COLE,
Sol's for Compl't.

69 *Depositions.*

FEBRUARY 17, 1888, FRIDAY—3 o'clock p. m.

Met pursuant to notice.

Present: Messrs. Cole and Cole, solicitors for complainant; also the examiner, and S. F. Phillips, Esq., solicitors for the defendant.

HARVEY SPALDING, who being produced as a witness of lawful age for and on behalf of himself and being first duly sworn, deposes and says:

Direct examination.

By Mr. PHILLIPS:

Q. Are you the defendant in this case?

A. I am.

Q. Do you recollect the statements made by the answer therein, including Schedules A and B; and, if so, are they true?

A. I recollect the statements contained in the tabulated Schedules A and B, and they are all true, but some of them are lacking in specific details.

Q. State, if you know, the condition of your business in prosecuting claims for postmasters and late postmasters at and just before your negotiation and written agreement with the complainant of June 3, 1880.

A. I know the condition of my business in prosecuting postmasters' claims at and just before June 3, 1880. The business I had followed for several years; it had, in fact, originated in 1871.

70 The business was that of litigation for the enforcement of adjustments and payments of salaries of third, fourth, and fifth class postmasters. The business had then been carried on in the courts and it had been determined that the only way in which the claims could be enforced was by legislation by procuring an enactment or mandate requiring the readjustments of the salaries of postmasters contended for to be made by the Postmaster General. I had secured the unanimous action of the Senate in favor of a bill of that kind on two occasions. One of those bills had been passed

at the session of Congress then pending, in the Senate. I had also obtained an unanimously favorable report of a bill for that purpose in the House of Representatives by the Committee on Post Offices and Post Roads. I had carefully gone over all the names of the postmasters on the official registers and all the data obtainable in order to determine what persons might make claim under this litigation and had made a complete approximate list of such claims, and that list had been registered in my office—the greater part of them. The remainder of the list was prepared for registration on slips in my office on the first of June, 1880. I was about to secure this act to enforce these claims. I was anxious to obtain the full benefit of the years of work that I had bestowed upon them. I had in my hands something less than 1,700 of the 7,500 claims registered. I had not the means to obtain the registered claims not in my hands.

Q. What do you mean by "registered claims"?

A. Those registered in my book.

Q. You said you had 7,500 registered claims. You mean
71 registered in your book and also on slips?

A. I include the slips in that number. The total number of them was about 7,500. Unless I should obtain the means for securing these registered claims I could not control the fees nor obtain the fees or compensation in full for the amount of work I had performed.

(Mr. C. C. COLE: Solicitors for the complainant, not knowing what the object of this testimony is, object to any testimony given for the purpose of explaining or in any way modifying or controlling the written contract between the parties mentioned in and exhibited with the bill or for the purpose of aiding in the construction thereof, as that contract is deemed by the solicitors for complainant to be clear and distinct and not opened to explanation or control by verbal testimony, and this objection is to be considered as repeated and applicable to every question and answer hereafter asked unless indicated to the contrary.)

Q. How were those lists made up or how did you get the information?

A. I got the information from official reports of the names of the postmasters and the receipts of these postmasters, and from the amounts of salaries allowed, and from a knowledge of the basis of fixing those salaries in the Post Office Department.

Q. Upon what assumption had you proceeded in forming them?

A. I proceeded upon the assumption that the three classes
71½ of postmasters mentioned under the act of June 12, 1866, were entitled to readjustment and payment of salary on the basis of actual commissions if the salary paid under the act of July 1, 1864, appeared by the returns to be ten per cent. or more less than such commissions prescribed by the act of 1854.

Q. Entitled at what time or before what time and for what time?

A. For the entire term of service within any biennial period be-

tween July 1, 1866, and July 1, 1872. Under the act of July 1, 1864, all such postmasters had been paid salaries fixed for future terms of service on the basis of commissions for a prior term of service, so that if the business and receipts increased after they were thus fixed they could receive a readjustment of salary under the act of June 12, 1866, or under a discretionary adjustment of the Postmaster General, so as to make their pay equal to commissions upon the increased business; and my whole contention had been prior to that and was at that time to enforce the payment to such postmasters of the difference between the former pay and the commissions prescribed by the act of 1854.

Q. How had you secured the 1,700 or thereabouts of claims of which the agreement of June 3, 1880, speaks as having in your hands?

A. I obtained the names of the postmasters from the official registers and made computations upon this business of those whose business showed that they had been paid salaries under the act of July 1, 1864, ten per cent. less than the commissions pre-
72 scribed by the act of 1854, and I addressed repeated communications to them, advising them of their rights under the law and soliciting their claims for prosecution and enforcement.

Q. Thereupon what happened in regard to the 1,700 claims—that is, how had you secured them?

A. In response to these communications I had received powers of attorney authorizing me to prosecute these claims from these 1,700 persons, coupled with a contract to pay me a fee equal to twenty-five per cent. of such claims as I might collect in their behalf.

Q. What had you then done to secure other similar claims?

A. I had made a thorough examination of the data of the business of these postmasters that was accessible for the time which I believed the act of June 12, 1866, covered, and had made the list that I mentioned for the purpose of enabling me to address them rapidly and conveniently in order to secure such part of the claims as I might be able to with greater facility. I had everything prepared for that purpose, but I lacked the means to pay the expenses.

Q. Well, you say that you made preparation to address them. Had you addressed any except the 1,700?

A. O, yes; I addressed all on the list. I sent out a great many thousand letters and circulars and had used what available means I had prior to that time to obtain these claims for prosecution on fee contracts of twenty-five per cent.

73 Q. How was it that you then secured in the aggregate, computing the claims in hand, the "about 4,000" of which you had spoken in said agreement?

A. I expected to secure them by having adequate means.

Q. I did not ask "by," but how.

A. I expected to secure them wholly by correspondence and soliciting.

Q. How was that expectation formed in your mind; how was it that you then expected to secure in the aggregate, including the

claims in hand, the "about 4,000" of which you had spoken in said agreement?

(Mr. PHILLIPS: You mentioned in the agreement that you then expected to get 4,000 more. I want to know upon what ground that expectation arose.)

WITNESS: You mean by what method?

(Mr. PHILLIPS: I want to know how it was you came to the conclusion that you could get 4,000 more claims.)

A. Because I had all the means of rapid correspondence all prepared in my office, and because with sufficient means I knew that I could bring the subject of these claims, their character and validity and my means of enforcement, to the knowledge of a great number of persons whose names I had listed. In the previous few years I had obtained with less facilities and less preparation—in one year I obtained 380 and in the year before that I obtained 260, but my means were limited and the lists were not then completed; and having them all completed it was upon that ground that I expected
74 to obtain with $2,500 enough to make up 4,000 claims out of this total register of 7,500 claims, and I was willing to pledge myself to obtain as many as I possibly could.

Q. Was there at any time any discussion betwixt the complainant and yourself as to the meaning of the act of June 12, 1866, as to the readjustment of postmasters' salaries; and, if so, how did you agree or differ?

A. The complainant and myself have almost time without number discussed the act of 1866, and we always agreed. It was discussed on the first of June, 1880, thoroughly examined both by the complainant and myself, and all the grounds of the act gone over, and we agreed perfectly and always agreed to that. I had in the commencement of the business made collections from the Post Office Department in precisely the same class of claims I was litigating on the first of June, 1880, and precisely on the basis which I was then contending for, and the collections of these claims and the grounds of the allowances were stated to the complainant and the names of the persons given.

Q. Did you at the time of applying to the complainant for the $2,500 communicate to him the state of your business, as already stated here?

A. I did; every particular of the business from the beginning up to that time.

Q. The fact that you had a list of the claims?

A. The fact that I had a list, and the fact as to the number of claims that I had obtained and the grounds upon which
75 I had obtained them.

Q. Did you communicate to the complainant the number of claims on your list?

A. The complainant required me to state what number of claims I could obtain. I stated the number of claims that I had listed, and my belief that I could obtain enough to make up 4,000, and I stated to him the ground upon which I predicated that judgment.

Q. Was this at the time of your offer to sell the fourth part before the agreement or not?

A. It was at the first interview I had with him, in which I made the proposition and stated what I wanted the money for.

Q. Were the two bills mentioned in the agreement as pending in Congress laid before the complainant before the execution of said agreement?

A. They were, both of them.

Q. Do you remember the day on which House bill No. 3981, mentioned in the bill of complaint and answer in this case, was defeated; if so, what day was it?

A. It was January 17, 1881.

Q. Did you see the complainant on that day; and, if so, where?

A. I saw the complainant on that day in the gallery in the House of Representatives. I left the House of Representatives after the bill was defeated and came to my office, room 64 in Corcoran building, and after I had been seated in my office, room 64, a very short time the complainant entered.

76 Q. What time of day was that, probably?

A. It was in the afternoon, probably three or four o'clock; between three and four o'clock.

Q. Was there any conversation betwixt you and the complainant on that day in regard to the further prosecution of your business; and, if so, when and where was it?

A. There was such a conversation. It was in my office, room 64 Corcoran building.

Q. Was any one else present; and, if so, who?

A. Mrs. Laura A. Blincoe was present in the office.

Q. More than one—how many others were present?

A. There were no other persons present beside the complainant and myself and Mrs. Blincoe.

Q. Do you recollect that conversation?

A. I do.

Q. If so, what was it—how did it end? Give what passed—what occurred, as near as you can.

(Mr. C. C. COLE: Solicitors for the complainant object to any answer to that question if the object of the testimony be to prove by parole any alteration or modification of the written contract referred to in and exhibited with the bill.)

A. Mr. Mason opened the conversation by commenting upon the defeat of the bill and the excitement that I had appeared to labor under when the vote was being taken. He said, directing his conversation to Mrs. Blincoe, "I suppose you have been informed

77 of the defeat of the bill." He said it was a very close vote. He suggested that the vote was so near successful that perhaps it would be well to make a new effort in the next Congress. I stated to Mr. Mason that I had done my very utmost to secure the passage of the bill; that I had labored to the utmost extent of my power, and I had spent every dollar I could raise on my own credit, besides the money that I had obtained from him, and that this was

the end of it, and that I could go no further. Mr. Mason made some remark with reference to the motto of not giving up, but try, try again was the better way. He said that he thought that if energetic means were taken by the preparation of great numbers of circulars and sending them out to the persons interested, the claimants themselves, so that they could have full and complete knowledge as to their own rights and as to the favorable action that had been taken in the Court of Claims, in the Senate, and the near success of this vote, that he thought it might be possible to succeed in the next Congress. I stated to Mr. Mason that such an undertaking involved a great amount of labor, and not only a great amount of labor, but a great outlay of money, and that I had no money and was at the end of my rope and could not furnish any money for that purpose. Mr. Mason then said that if I would undertake to prosecute the claims in the next Congress energetically he would stand by me and furnish whatever money might be needed for the expenses of the business whenever it should be needed. This encouraged me, and I agreed to go on with the prosecution. I was
78 prepared to furnish the labor—the expert labor—necessary to go on with the prosecution, and I agreed to do it. Following that there was a discussion as to what should be done, and Mr. Mason advised the printing of extracts from the proceedings of Congress in connection with the matter in great numbers and to send them out, one after another, until the claimants should be thoroughly aroused, so that they would present their own cases to the members of Congress and give us a chance to succeed in the next Congress. He also suggested that before the end of the Congress then in session I should bring it up before the Appropriation Committee of the House of Representatives, so as to keep it alive and keep it in condition for further action; and this was agreed upon. I agreed to follow his suggestions in that respect, and carry the prosecution of the claims into the next Congress, and he agreed to stand by me and furnish the money needed for the expenses whenever it should be needed.

Q. Did the complainant comply with his part of said agreement; and, if not, how far did he comply?

A. He did not comply with his agreement. I called upon him repeatedly for money, as I needed it, and went on with the business, and he paid me some wholly insignificant sums—$15 or $25 at a time. He always admitted, whenever I made these calls, his obligation to furnish the money; but, at the same time, he always stated some business transaction not yet perfected from which in the near furture he expected money, and when he obtained it he would furnish it.

Q. How much, in the whole, did Mr. Mason furnish you in this way?

79 A. I kept no account of the money because it was insignificant, and he always said that he would furnish money later. My best recollection of the small sums that he furnished is that they would aggregate about $150 and possible $175.

Q. Do you recollect that anything occurred betwixt yourself and

the complainant about the month of September, 1882, in regard to his agreement of January, 1881; and, if so, where was it and when and what passed as nearly as you can state it?

(Mr. C. C. COLE: Last objection repeated.)

A. I recollect an interview with the complainant, which I think was about the first of September, 1882. It was immediately after his return from an extended trip or visit north. It was at his house on I street, not far from North Capitol street. I met Mr. Mason in his parlor in that house. I stated to him that I had called to have a final settlement with reference to his furnishing the money for the expenses of the business, which he had agreed to furnish on the 17th of January, 1881, but which he had failed to furnish. I stated that it was absolutely necessary to have a definite and final settlement of that question; that he had failed to comply with his agreement and I was in great embarrassment to carry on the litigation; that I found it difficult to raise money and should probably be compelled to raise money upon the faith or credit of the business itself, and so long as he had a claimed interest in it that would be an embarrassment and obstruction instead of a
80 help. I then offered to him, if he would make good one-fourth of the expenses that I had incurred in the business from the 17th of January, 1881, up until that time, and thereafter on each month would pay to me a sum equal to one-fourth of the expenses on each month, that I would go on with the business to the end, recognizing, of course, his right to an interest in one-fourth of the fees of the claims mentioned in the contract. I requested him to do that. He gave me no reply. He would not talk about it. I then stated that his interest should cease in the business, and that if he agreed that it should cease I would then raise the $2,500 that he had paid to me and return it to him; that I would then go on and do the best I could with the business, and when I got to the results, if I made collections, I would give him $2,500 as a bonus for the use of his money. He made no more answer to this than he did to the first proposition. I do not remember that he answered a word. I then proposed to Mr. Mason that if he would agree that his connection should be wholly severed with the business I would bind myself, in case I succeeded in collecting the claims, to pay him $10,000, the $2,500 to remain with me. The only answer he made to that was that he thought about $20,000 would be right in view of the estimate of $25,000 when we made the agreement for one-fourth of the fees. I then stated to Mr. Mason that, having refused to agree to either of my propositions, I should consider his interest in the business wholly ended; that I should go on and raise
81 the money necessary to carry the business forward upon the credit of the business itself, if necessary, or by any other means that I found necessary; that if I succeeded in collecting the claims I should return to him such sums of money as I thought would be right, or rather as might be right, in view of the fact that I had had of him $2,500, and that ended the interview.

Q. Did the complainant after that time do anything more in the

fulfilment of the agreement of January 17, 1881, of which you have spoken?

A. He never did.

Q. After September, 1882, did you at any time inform the complainant of your need of money in your business and apply to him for such money; and, if so, upon what footing did you so apply or deal with him?

A. I never applied to him for any money except as a temporary loan. I had loaned him money and I had asked him for loans.

Q. You mean after September, 1882?

A. Yes, sir.

Q. After September, 1882, did the complainant at any time offer to contribute to the expenses of the business?

A. He never offered to contribute in any way.

Q. What pecuniary transactions occurred betwixt the complainant and yourself after September, 1882?

(WITNESS: Do you want me to state what money I paid him?

Mr. PHILLIPS: Well, pecuniary transactions one way or the
82 other—debit or credit.)

A. Mr. Mason has asked of me temporary loans and I have asked of him temporary loans, and they have been made mutually at different times and to quite a number.

Q. Have readjustments at any time been made in the post office upon the theory which you entertained in June, 1880, as to the meaning of the act of 1866; and, if so, at what time and for what amount?

A. Readjustments were always made during the life of the act of 1866 on the same basis that I claimed, but they were comparatively few in number.

Q. What do you mean by "during the life of the act of 1866"?

A. Between July 1, 1866, and July 1, 1872, readjustments of salaries were always made on the basis I then claimed.

Q. For what amount?

A. Quite a number of claims in which I was the attorney were made upon that basis and paid. Probably $2,500 or $3,000 in the commencement of the litigation were adjusted and paid on the basis, and there never was any other basis suggested until after the act of March 3, 1883.

Q. What do you mean by the word "litigation" when you use it here?

A. I mean the contention I have carried on in the department, in Congress, and before the court to enforce these claims.

Q. In administering the act of March 3, 1883, did the
83 Postmaster General enforce the theory you have mentioned as yours in June, 1880?

A. He repudiated the theory.

Q. State in general terms what theory he did administer and the time it was first announced as the law of the department.

A. It was announced that the only rule required by any of the salary laws was to compute the salaries of postmasters for two years in advance upon the basis of the commission for the prior two

years, and the law has ever since been administered by that one rule, and this denies the readjustment of salaries in cases of increase of business on the basis of the commissions, and no such claim has ever been adjusted. It was suggested within a very short time after the passage of the act of March 3, 1883, and the matter was pending from the time of this suggestion until, on the 9th of June, 1883, the Postmaster Genéral prepared a letter of instructions as to the execution of the law which promulgated this rule. The adjustments under this rule were deferred, however, until about April, 1884, when they were finally entered upon, and that rule and no other rule has been followed from that time to this.

Q. What do you mean by "from that time"? What time?

A. From April, 1884, and every allowance made has been upon the basis of that rule.

Q. Had any adjustments been made under the act of 1883 before April, 1884?

84 A. There were none actually made before April, 1884.

Q. How did the method in which the act of 1883 was enforced affect the interests of the claimants upon the list which you had prepared at the time of applying to the complainant in June, 1880?

A. It denied their rights as I had asserted them altogether, and, of course, it was fatal to their interests in that regard. At the same time, while denying the claims that I had prepared and presented for a particular term of service, the rule entered upon by the Postmaster General had the effect in a good many cases to admit a claim of the same persons on a totally different basis for a different term of service, and I thereupon made other and different claims for the same persons, and have obtained allowances for a good many of them upon this new basis.

Q. What steps did you take of acquiescence or otherwise in regard to the action of the Postmaster General?

A. From the beginning I fought this new rule by every legitimate means in my power, and demonstrated, as I thought, that it was unwarranted and a denial of the rights of my clients under the act of June 12, 1866.

Q. At what time did you first begin to secure for yourself as attorney claims of such postmasters as were entitled to readjustments under the views taken by the Postmaster General?

A. On the first suggestion of the Postmaster General of this new rule I commenced to prepare for that contingency and

85 commenced to obtain the claims that might be allowable under the new rule. I think that I commenced as early as June, the first of June, 1883, to get these other claims in.

Q. Had you before May or June, 1883, solicited your appointment as attorney for claimants other than those included in the list of 7,500 of which you have spoken?

A. Never. I made that as a complete list within which to work.

Q. How many of those 7,500 claims did you finally secure for prosecution by yourself as attorney?

A. I secured in addition to the 1,700 that I had on the first of

June, 1880, prior to January 1, 1881, about 500, and I secured about 2,000 more prior to March 3, 1883, and prior to the change in the administration of the law. The total number was 4,209. Of this 4,209 claims from this original list there were several hundred that I could not obtain, and that other attorneys obtained and sent to me. The answer correctly states the number by actual count, which is 4,208.

Adjourned to—

FEBRUARY 18, 1888, SATURDAY—10 o'clock a. m.

Met pursuant to adjournment.

Present: W. L. Cole, Esq., of solicitors for complainant; also the examiner and S. F. Phillips, Esq., solicitor for the defendant.

86 HARVEY SPALDING, who further deposes and says:

Direct examination.

By Mr. PHILLIPS:

Q. Were the 7,500 names of postmasters registered in your office by you in a book at any time?

A. 7,520 names of postmasters were registered in my office under my direction.

Q. At what time was that registration commenced?

A. It was commenced in February or March, 1880. I prepared and purchased the book for registration about the middle of February, 1880; the work was commenced as soon as practicable after that.

Q. Was that book made to order; and, if so, by whom?

A. It was made on my order and under my directions as to the headings and ruling for the purpose of receiving this registration; it was made by my direction.

Q. You did not make the book. By whom was the book made?

A. The book was purchased of Messrs. Thomas McGill & Co., of Washington, but they had it made at Baltimore.

Q. The names entered in that book were taken from what, did you say?

A. They were taken from the official registers.

Q. Immediately?

A. They had been prepared previously, the most of them had, for registration taken from the official registers and written upon slips for the purpose of registration.

87 Q. And then?

A. Then they were transferred from the slips thus prepared by my clerks in my office.

Q. To what?

A. To this book.

Q. Do you know at what time that registration in that book was ended?

A. It was mainly completed on the first of June. There were some names to be entered from the slips, and those were entered

subsequently; I think about the first of June and immediately after that.

Q. About how many were entered on the first of June, 1880?

A. Well, there were over 4,000—4,822. Slips for the rest were prepared and only awaited writing them in the book.

Q. The slips for all those 7,520 names had been prepared by what time?

A. Well, before the first of June, 1880.

Q. Were the names of postmasters that you registered after May, 1883, inserted in the book in your office?

A. Part of them were inserted in books and part were prepared on schedules. The total amount or number of those registered in books and prepared on schedules went away up into the thousands. To start on I registered something over 12,000, I think, in two books other than the registration I had made (previous to March 3, 1883), and then I prepared from one time to another schedules of claims that I thought might be entitled under the new rule of ad-
88 justment; oh, probably aggregating 20,000.

Q. What do you mean by "schedules"?

A. They were the lists containing the post office, State, and name of the claimant, prepared in regular alphabetical order of the post offices in each State, and they were made by States.

Q. And of the claims other than the said 7,520 how many did you procure in all?

A. Well, the total number of claims I have is 24,259, and the number of claims amongst the 7,500 that I had is 4,208; so that, in fact, I have 20,051 claims procured from registration and schedules prepared to meet the new construction of the law.

(Mr. W. L. COLE: Solicitors for complainant repeat the same objection to the testimony taken today as was first made on yesterday. And in order that they may have the benefit of cross-examination in the event the court should hold the testimony to be admissible, and without intending to waive the exceptions to the testimony hereinbefore noted, proceed to the—)

Cross-examination.

By Mr. COLE:

Q. Was not the rule adopted by the Postmaster General which you have spoken of in your direct examination the construction placed by him on section 8 of the act of 1866?

A. It was the construction placed by him upon the act of
89 July 1, 1864.

Q. In connection with the amendment of 1866?

A. He held that the act of June 12, 1866, did not require any adjustment by any other rule than that prescribed in the act of July 1, 1864.

Q. Did not his construction of the law differ from yours only in respect to the frequency with which the postmasters were entitled to have their salaries readjusted?

A. It differed altogether and fundamentally from the construction that I claimed and was, in fact, precisely the reverse of what I claimed.

Q. Did he not construe the law to mean that such readjustment could only be demanded as matter of right once in two years, and then to take effect prospectively?

A. That is what he claimed.

Q. And was not your construction that a postmaster had a right to readjustment whenever his quarterly returns for any single quarter showed that the salary allowed him was ten per cent. less than it would be on the basis of commissions under the act of 1854?

A. That was not my construction.

(WITNESS: Shall I tell what it was?

Mr. COLE: Yes.)

WITNESS: My construction of the act of June 12, 1866, was this: that when it appeared from the returns that the adjustment of a postmaster's salary had been made prospectively and it
90 turned out after the prospective adjustment that the returns within the ensuing biennial period showed that the postmaster had received a salary ten per cent. or more less than the commissions computed upon the returns he was entitled to have that difference made good to him, so that his salary should equal the commissions on the returns themselves and not for any future period.

Q. At the time of making the contract with Mr. Mason was the difference in construction that you have herein stated explained to him by you?

A. Perfectly, and he understood it all.

Q. Then you understood beforehand that there was a difference of opinion in the construction of the law?

A. Oh, the difference of construction was never heard of, if that is the question.

Q. (repeated). Then you understood beforehand that there was a difference of opinion in the construction of the law?

A. There never had been any difference in the construction of the department at that time.

Q. Have not all the 13,000 and odd cases which you have prosecuted and had allowed been so prosecuted and allowed pursuant to the act of March 3, 1883?

A. The precise statement of the department in regard to these allowance- is this: Under the construction of the act of July 1, 1864, and other statutes named, as construed by the honorable the Attorney General, these allowances had been made.

(Mr. COLE: The examiner will please repeat the question
91 and request the witness to answer it.)

Q. (repeated). Have not all the 13,000 and odd cases which you have prosecuted and had allowed been so prosecuted and allowed pursuant to the act of March 3, 1883?

A. Well, my own statement of the cases is that there has never been a single claim prosecuted and allowed pursuant to the act of

March 3, 1883, but that all have been allowed pursuant to the act of July 1, 1864. The department's statement of the cases is that under the construction of the act of July 1, 1864, and other statutes, as construed by the honorable the Attorney General, these allowances have been made.

Q. And yet you have not answered my question, whether these cases which have been prosecuted by you to a successful termination have not been so prosecuted and allowed pursuant to the act of March 3, 1883.

A. They have been presented to the department and demand made for adjustment under the act of March 3, 1883, and in response to that they have made the adjustment that I have explained, and the greater part of the allowances which had been unpaid have, in fact, been adjusted under the act of August 4, 1886.

Q. That was a proviso contained in the appropriation bill?

A. Yes; it was.

Q. For the payment of these claims?

A. Yes; and validating these adjustments.

Q. Were not the bulk of the claims presented for payment before the act of August 4, 1886?

92 A. About three-fourths of the unpaid claims were presented under the act of August 4, 1886, and 8,000, I think—I can tell in a minute (examining book)—I think it was 8,199 of *the* these claims were got with special reference to the act of August 4, 1886, and amongst these more than three-fourths or about three-fourths of all the unpaid allowances have been secured.

Q. Were these claims presented for payment under the act of 1883 or the act of 1886?

A. I think that we had blanks printed referring to that act, but I am not certain. They were procured with special reference to that act of August 4, 1886.

Q. As a matter of fact, Mr. Spalding, is not the act of 1883 the only act of Congress commanding the Postmaster General to make adjustments of the salaries of postmasters and late postmasters under the act of 1864 as amended by the act of 1866?

A. The command is contained in the act of June 12, 1866. The command contained in that act is repeated in the act of March 3, 1883. Another command, the reverse of this, is contained in the act of August 4, 1886.

Q. When the demand was made by you on behalf of the claimants for readjustment of salaries was it not made under and pursuant to the act of 1883 and not pursuant to the act of 1886?

A. The method of presentation of the claims to be adjusted by the mode prescribed by the act of June 12, 1866, was set forth

93 in the act of March 3, 1883, and that method was complied with in all the applications I made.

Q. When and where was your first interview with Mr. Mason about the sale to him of an interest in the Post Office claims being prosecuted by you?

A. Well, it was a few days, perhaps, before the date of that agreement, and it was at his house, on I street near North Capitol street.

Q. What representations did you make to him about the value of your business and the fees that would likely be realized out of the claims?

(Mr. PHILLIPS: I object to any evidence of negotiations by word of mouth anterior to the settlement of the agreement in writing.)

A. I represented to him that after several years of litigation of these claims and of efforts to obtain them for prosecution I had obtained in the neighborhood of 1,700; that I had gone over thoroughly the data obtained in regard to such claims and had made a list in my office of persons that I thought might be entitled; that these claims on this list, if they could be obtained, would produce, if successful in securing the passage of the bill which had then been reported, a large sum of money; that the Senate bill which had been reported only proposed to pay or adjust the claims where a special application was made at the time of the rendition of the services, and that that would only enable a limited number
94 of these people to secure allowances; that the House bill contained no such limitation, and if that could be enacted into law a large sum might be secured if I had the money to obtain from the lists I had made up the greatest possible number. He required me to state what number I could have obtained if I had the money, and I stated it was my best judgment from the work I had done before that and from having these lists ready made that I could obtain 4,000. He required me to state how much the fees would be if on the basis of the House bill *if* I obtained the 4,000, and I stated that the amount that could be collected on 4,000 claims, in my judgment, would be at least $400,000, and that if the Senate bill passed I did not suppose that more than $75,000 could be collected. Those were the representations that I made to Mr. Mason at that interview.

Q. Did you make any other or different representations at any other interview?

A. I never did, to my recollection. At the time of the defeat of the bill, on the 17th of January, 1881, Mr. Blount——

(Mr. COLE (interrupting): I do not call for anything except the matter that took place about the time of the making of the contract.)

WITNESS: I never made any different representations in regard to that matter, unless it was after the act of March 3, 1883, when he came in to inquire how the thing was getting on under the new construction.

95 Q. Was the contract made at that interview that you have just spoken of?

A. I think that the contract was made at the second or third interview, but my recollection is not distinct in regard to that.

Q. Where did the second interview take place?

A. At Mr. Mason's house. He made the writing at his house; he wrote it out.

Q. Was the contract written out at the time of the second interview?

A. I think it was; I may have called three times; I think he wrote the contract and had it prepared at the second, but my recollection is not distinct in regard to that. The contract was made without much delay after my interview with Mr. Mason.

Q. You never saw Mr. Mason at any other place than at his house in reference to the making of that contract?

A. I do not remember that I ever saw him at any other place about the contract until he had written the contract. I may have met him in the street car and talked with him about it.

Q. As a matter of fact, was not your first interview in relation to this business in a street car of the New York Avenue line?

A. Well, I am not certain that it was. I cannot recall definitely that first talk I had with him, but the first thing fixed in my recollection is the interview at his house.

96 Q. The representations, then, that you made to him, as herein stated, are substantially the same as you have answered in the answer to this bill?

A. It is an accurate statement of the representations made to him, and it was the fact that he would have his one-fourth of the fees, $25,000, if we succeeded in the House bill.

Q. Did you not, at the time of making this contract, request Mr. Mason to limit the amount that he might be entitled to receive under it to $25,000?

A. No, sir. (See page 124 for correction.)

Q. And did he not object to such condition?

A. I did not make any such request of him. (See page 124 for correction.)

Q. At the close of the second paragraph of your answer to the bill in this cause you say that all allegations under title second, not herein admitted, are denied. Did you intend to deny and do you now deny the allegation in the bill under title second that in order to obtain from complainant $2,500 you represented to him that the claims properly payable under section 8 of the act of June 12, 1866, were 8,000 or 10,000 in number, and of two millions of dollars in value?

A. I never made any such statement to Mr. Mason at all.

Q. You cannot be mistaken about that?

A. There is no mistake about it. I know what was stated on that point, and I know further that when the bill was defeated——

(Mr. COLE (interrupting): I do not ask for what took place
97 when the bill was defeated.)

Q. Do you now deny that you represented to him at that time that you had in your hands between 1,600 and 1,700 claims, in value about $500,000, upon agreed fees of twenty-five per cent.?

A. I deny it absolutely. I never made any such statement. I never made any estimate of the total amount of claims that could be collected under my litigation to be greater than $500,000, and those that I believed, if I had the money, I could control in that case and collect $400,000; and that was the statement I made to Mr. Mason.

Mr. PHILLIPS: Let it be understood that my objections are repeated to all of this testimony (understood so far to be as to oral statements by S).

Q. Do you deny now that you represented to Mr. Mason at that time that you had all the necessary data to secure 1,500 more claims within two or three months and a thousand in addition within a year, and that you could easily secure 4,000 of such claims, in value about one million of dollars, upon agreed fees equal to twenty-five per cent.?

A. I represented to Mr. Mason that if I could obtain the money, the $2,500, I could secure in my judgment, having the list ready prepared, enough claims by the time the bill should become a law to the number of 4,000, and that the fees or that the amount to be collected on those claims, if we succeeded in getting the House bill passed, would amount to at least $400,000, in my judgment;
98 that if we failed to get the House bill and only secured the Senate bill, upon the same number of claims we could probably collect about $75,000.

Q. Then you did not represent to him that the value of the 4,000 claims would be a million of dollars?

A. I did not.

Q. You speak only from your recollection?

A. I speak because I know the thing was repeated frequently afterwards and the question of the amount involved was brought up in such a way as to fix it in my memory. I had records of the estimates made when the thing was pending and Mr. Mason had access to them. I have them here in the office.

Q. He had access to them after the contract was made?

A. After the contract was made and when the bill failed.

(Mr. COLE: Do not speak of the failure of the bill. I will come to that.)

WITNESS: It is thoroughly fixed in my memory by what occurred at the time and subsequently. There is no mistake about it. I cannot be mistaken about it.

Q. Did you not make the representations herein inquired of to Mr. Mason in writing?

A. No, sir.

Q. Did you not submit to Mr. Mason a statement in writing as a basis upon which this negotiation commenced and was consummated?

A. I do not think I did. I have no sort of recollection of any such paper.

99 Q. Look at the paper-writing now handed you and say whether it is in your handwriting.

Mr. PHILLIPS: Mr. Cole, I do not want to make needless objection. I do not object, of course, to any attempt made to impeach Mr. Spalding's testimony. Of course you have the right to do that, but I do object to making out your case in the bill at all any further. I object to the use of the evidence as evidence to establish the case

made out in the bill, when you declined to introduce testimony to do that. This is all rebuttal; this is nothing but rebuttal. Except so far as to impeach the defense, this testimony is objected to for any other effect than that.

A. This paper appears to be in my handwriting; but I have no sort of recollection in regard to it, except that it appears to be in my handwriting.

Q. Can you not now say that you handed this paper to Mr. Mason as the basis of the negotiation between you and him?

A. I cannot say anything about it, further than it appears to be in my handwriting and now seems to have been handed from him to you.

Q. At the close of the first interview that you had with Mr. Mason upon this subject, did he not say to you that he was not familiar with the subject and requested you to put the statement that you had made to him verbally in writing, that he might explain and consider it, and did you not thereupon write this paper and hand it to him as the basis of the negotiation?

100 A. I cannot state anything in regard to that paper further than it appears to be in my handwriting and it refers to this matter. I know distinctly that when this contract was made the subject of his fees was discussed, and that if we succeeded in the House bill he would get $25,000 as his share.

(Mr. COLE: I here give in evidence the paper just shown the witness and which he recognizes as being in his handwriting.

Mr. PHILLIPS: To the admission of which I object for the same reason as above stated.)

It is agreed between counsel that a copy thereof may be here filed in evidence, to have the same force and effect as and in lieu of the original, which is to be produced at the hearing of this cause if called for.

And a copy of said paper is herewith filed in evidence and is as follows, being marked—

EXHIBIT A. H. No. 1.

(*Harvey Spalding's Statement.*)

"The act June 12, 1866, provided for the increase of pay as often as the commissions increased ten per cent. of all postmasters whose pay was less than $2,000 per year. The Postmaster General did not execute this law.

The Senate has passed a bill (Senate 903) and the House Com. on P. O. & P. R. have unanimously reported a bill for same purposes—that is, for the execution of this law.

The debt, a settlement of which is to be provided by these 101 means, is $2,000,000, divided between 8 or 10 thousand claimants. I have in hand between 16 and 17 hundred of these claims. I received last week 71, and I have all the data neces-

sary to secure 1,500 more in two or three months and 1,000 in addition within the year. I can easily control 4,000 of the claims, involving about $1,000,000, upon agreed fees equal to 25 per cent. Those I have in hand involve about $500,000, and the fees agreed upon are 25 per cent.

I propose to sell absolutely one-fourth of all the fees of the claims in hand and one-fourth of all I can bargain for hereafter (and no case to be taken for less than 25 per cent.) for the sum of $2,500. The purchaser shall be wholly free from all expenses of conducting the business, and shall receive free of all charges one-fourth of each and every fee on each and every claim now in hand or hereafter secured by me.

Pending the prosecution and collection of these claims I will substitute the purchaser as attorney and assign the fees in one-third of the cases in hand and one-third of cases secured each week or each month, said cases to be carefully kept by the purchaser in some secure place till ready for settlement.

Payment of the $2,500 may be made as follows: $500 cash; $1,000 in notes of $250 each, payable in one, two, three, and four months; $1,000 in endorsed notes of $250 each, payable in five, six, seven, and eight months.

In case of any default of payment the one-fourth interest shall be reduced proportionally."

102 Q. In your answer to the bill in this case you say that you told the complainant that you had prepared a list of 7,500 claimants. As a matter of fact, did you not tell him this after the contract was signed, and not before?

A. I told him that I had made lists of the claims and had them in position; that if I had the money I could obtain them, I thought, rapidly; and he came into the office in regard to the matter and saw them, but I cannot say whether he came in and examined the book before the contract was made or not.

Q. Is it true or not, as stated in the paper marked Exhibit A. H. No. 1, that there were 8,000 or 10,000 of these claimants that you knew of at the time of this negotiation?

A. Well, I stated to Mr. Mason that the nominal claims had not been prepared, and that I had not paid any attention to them.

Q. Then, as a matter of fact, you did understand the 7,500 claims to include the claimants who might be entitled to pay under the act of Congress?

A. The 7,500 claims which I had negotiated were all of sufficient value to take notice of, in my judgment. There was a great mass of claims that might be made of from five dollars to ten dollars that I had omitted. Including the claims of that nature, probably the whole amount might have been 8,000 or 10,000.

Q. What was your understanding as to the value—the minimum value—of the claims that were to be prosecuted?

A. Well, my policy was not to include claims for registra-
103 tion unless they would amount to twenty-five dollars.

Q. You supposed that the claimants on the lists that you had

made up would be entitled to twenty-five dollars and upwards, did you?

A. That was the theory upon which I registered them.

Q. Now, in the actual adjustment and payment of these claims, was there not very many of them below twenty-five dollars?

A. I do not think any of the claims were below twenty-five dollars, excepting those that were admitted under the new construction of the law.

Q. I am speaking now of all claims which have been presented for adjustment and allowance.

A. There never has been a claim adjusted upon the basis of my computation of those claims at all.

Q. I am not asking about that. I am through with that branch of the subject. I am trying to ascertain now the amount found due each claimant of the claims that you have prosecuted.

A. Oh, I have brought many thousands of claims under the new construction, and the allowances ranged clear down to a few dollars; I think, in some instances, below a dollar.

Q. There were a great many of them below twenty-five dollars?

A. Yes, sir.

Q. What proportion of them?

A. I never have looked to see, but the documents will show.

104 Q. As many as one-half?

WITNESS: Below what?

(Mr. COLE: Below twenty-five dollars.)

A. I cannot state as regards that. There were a great many nominal claims allowed under the new construction of the law.

Q. And those go in to make up the 13,000 and odd claims which you have successfully prosecuted?

A. Yes; they make up to the claims that I obtained when they reversed the construction of the law. It created at one stroke three-fourths of all postmasters in the United States claimants, and made them claimants under the new construction of the law.

Q. Is that aggregate of claims which have been allowed under the law which has finally prevailed more or less than it would have been if the construction you contended for had prevailed?

A. There is not any proportion whatever between the two. The construction which has been adopted has created a great many thousand claims. They could not have claimed a dollar under the law under my construction. The claims that I prosecuted before 1883 never have been paid, not one of them.

(Mr. COLE: I was not asking you that, Mr. Spalding.)

WITNESS: Let me hear the question again, and I will confine myself to it.

Q. (repeated). Is that aggregate of claims which have

105 been allowed under the construction of the law which has finally prevailed more or less than it would have been if the construction you contended for had prevailed?

A. Well, I cannot determine that question. The claims that have been paid are not the claims that I prosecuted originally. Whether the aggregate of them would be more or less than the ag-

gregate of the claims I prosecuted, if they were paid, I cannot state. The fact is that I never had anything but the roughest data to make my estimate upon.

Q. Did you not suppose that the claims, if your construction had been carried out, was going to be very much larger than they have actually turned out to be under the construction which has been adopted?

(Mr. COLE: I desire a categorical answer to that question.)

A. On the claims that I had secured before March, 1883——

(Mr. COLE: I object to the witness evading the question.)

WITNESS (continuing): I have no doubt now that the allowances, if they had been adjusted on the basis I contended for, would have been equal to a million of dollars. I never supposed that to be the case until I had some further light as to the actual figures in the department.

Q. Now, if on the first of June a part of the said 7,500 claims were registered upon books and a part upon slips, state about how many were contained upon the slips.

A. I can tell from the book itself that I have referred to.
106 2,698 were prepared on slips at that time and in bundles by States.

Q. From what source did you obtain the 12,000 claims that were registered upon the second book mentioned?

A. Well, it was a hap-hazard registration made in contemplation of the new construction suggested by the Postmaster General at the first interview which I had with him after the act of March 3, 1883.

Q. When was that list made up?

A. It was made up immediately after the suggestion of a new construction of the law by Postmaster General Gresham. I think it commenced—it must have commenced in April; it may not have been until May, 1883. It was very soon after the law passed.

Q. That embraces no part of the 7,500 claimants?

A. Well, in the hurried way in which it was done, in order to be prepared for this new construction, we duplicated some of the cases and afterwards we made the corrections.

Q. You said in your direct examination that of the 7,500 claims you had procured 4,208 up to March 3, 1883. How many others of the 7,500 have you since procured?

A. Well, there may be and probably were some procured along in 1886 and scattering ones at other times. Of the original claims registered in the book I have not examined them to determine the number and cannot state without an examination of the jackets.

Q. Can you state by such examination?
107 A. Every jacket can be selected by the number in that book.

Q. And determine whether that is one of the original list of 7,500?

A. The book will determine that question and will determine at what date it was received in the office.

Q. When did you file the first claims for adjustment after the passage of the act of March 3, 1883?

A. Well, I commenced to put my force to work to prepare them as rapidly as possible, and I have a memorandum here in regard to it. As to the first and second and third filing the dates are not stated. I filed first, 447; second, 518; and third, 776. On April 4, 1883, I filed 806; on April 5, 1883, I filed 717; on April 6, 1883, 456, and on May 7, 1883, I filed the rest.

Q. How many?

A. 769 I filed on that day.

Q. Are those all the claims you had in hand at that time?

A. Yes.

Q. When were the next claims filed by you?

A. September 10, 1883.

Q. How many?

A. 539.

Q. And the next?

A. November 3, 1883.

Q. How many?

A. 704.

Q. And the next?

108 A. December 6, 1883, 499. The next I filed was December 24, 1883, 736; March 3, 1884, 1,159; April 5, 1884, 324; July 24, 1884, 826; August 11, 1884, 360; August 26, 1884, 365; September 8, 1884, 220; September 25, 1884, 573; October 13, 1884, 344; November 3, 1884, 309; December 6, 1884, 319; December 30, 1884, 15; January 29, 1885, 516; February 16, 1885, 28; February 24, 1885, 6; March 3, 1885, 31; March 30, 1885, 496; April 9, 1885, 11; May 26, 1885, 407; July 25, 1885, 419; September 1, 1885, 46; October 13, 1885, 477; December 11, 1885, 515; January 25, 1886, 122; January 29, 1886, 265; February 15, 1886, 68; April 8, 1886, 386; May 18, 1886, 490; July 2, 1886, 505; July 26, 1886, 478; August 3, 1886, 66; August and September, 1886, 540; October, 1886, 398; November 1st to November 8, 1886, 63; November 8, 1886, 530; November 19, 1886, 1,239; December 16, 1886, 2,698; December 21, 1886, 104; December 24, 1886, 778; December 30, 1886, 865, and December 31, 1886, 440.

Now, I want to state in regard to these filings that in some cases, in such a mass of cases, there were duplicates, and the numbers stated in the answer are made from an actual examination of the numbering in consecutive order of all the claims in the office, and whatever difference there may be between the answer and this statement I have just given can be accounted for in that way.

Q The number stated in the answer is accurate?

A. It is correct.

Q. And out of all these there have been allowed by the

109 Post Office Department 13,055?

A. The answer contains a correct statement as to the number of allowed claims and the number upon which no allowances were made.

Q. In the course of the prosecution of these claims when did you

first determine that it was necessary to have legislation in aid of the claimants?

A. It was following the decision of the Supreme Court in the test case in which they decided——

Q. (Interrupting.) What is that case?

A. That is the case of McLean.

Q. Against the United States?

A. Against the United States in the Supreme Court. The proper title of the case is The United States *vs.* McLean.

Q. Can you recall that date?

A. Well, to the best of my recollection it was late in the year; probably December, 1877.

[Mr. COLE (referring to the 95 U. S. Reports, p. 750): The date of that decision is January 21, 1878.)

Q. Did you procure legislation in the Congress then in session or was your first effort in the next succeeding Congress?

A. Within a few days after that decision of January 21, 1878, I presented petitions or had petitions presented in the Senate for the legislation requisite to settle these claims.

110 Q. Was a vote reached upon the bill during that session?

A. At the end of that session a vote was reached and a provision—a limited provision—was incorporated in the deficiency appropriation bill.

Q. It was the substance of the bill favorably reported in the Senate previously?

A. That was an amendment of the Senate and failed to become a law.

Q. Please proceed to state the history of the legislation.

A. Immediately upon the commencing of the next Congress, at the first session, I proceeded to promote legislation, both in the House and in the Senate, and secured a favorable report by the Senate committee of a bill which was passed by the unanimous action both by the committee and by the Senate. This was the limited bill which limited the settlement to those who made written applications at the time of the rendition of service.

Q. Copy of that bill is exhibited with the bill in this cause, is it not?

A. It is referred to, but I do not know whether it is exhibited. I secured a favorable and unanimous report of the House bill 3981 upon the same subject which did not contain this limitation, and that s reported unanimously, as I remember, by the House Committee on Post Offices and Post Roads, and the conditions were such that I was certain of securing the enactment of one or the other into a law.

Q. The House bill failed of passage on the 17th day of

111 January, 1881?

A. Yes.

Q. By what vote?

A. The vote was very close, I think.

Q. Did it not lack just one of the requisite two-thirds?

A. I think the vote as announced lacked two or four.

Q. If passed at that time it had to be under a suspension of the rules?

A. Yes; and, in fact, it never was possible to secure under the rules of the House an enactment of the law except upon motion to suspend the rules requiring a two-thirds vote.

Q. Upon the failure of the bill in that Congress do you now say that you were so discouraged that you had definitely determined to abandon your effort to secure payment of those claims?

A. That was precisely the effect of the defeat of that bill upon me on that day.

Q. That was a temporary fit of the "blues," perhaps?

A. It was a conclusion that it would be impossible to secure a bill without means that I could not control, and I had used every possible effort to secure this by laying the matter individually before one hundred and fifty members of Congress, I suppose, and by every method at my command which was legitimate, and I was destitute of means, and when the bill failed I felt and believed that I was at the end of my rope.

Q. Had you no other business at all except the prosecu-
112 tion of these claims?

A. I had unimportant isolated cases of claims.

Q. Did you not own real estate in the city of Washington at that — from which you were receiving rents?

A. Well, I am in doubt whether I had my rents at that time. I owned two small brick houses on 4½ street southwest, and at some time I had built two small brick houses on Union street southwest. I do not remember. I also built four small brick houses on 23rd street which I had disposed of at some time; but I had no means to meet the expenses of prosecuting these postmasters' claims.

Q. Were not those houses that you mentioned, or part of them, built by you between the time of your contract with Mr. Mason and the 17th of January, 1881?

A. I do not remember at what dates those houses were built. I incurred debts in building them, and the houses on 23rd street, whenever I built them, I mortgaged them.

Q. How much was Mr. Mason owing you on the $2,500 on the 17th day of January, 1881?

A. I do not remember how much it was. However, at the time that agreement was made he said that he would just pay me the balance due on the $2,500, but I do not remember how much it was.

Q. When did Mr. Mason first let you have any money after the 17th of January, 1881?

A. Well, I cannot fix the dates at all that he paid those nominal sums on account of the expenses of the business. There
113 was no record made of them. It was a temporary thing simply in preparing. In regard to the payment of the residue of the $2,500 after that time, I have not the dates at all fixed in my memory. I do not know, in fact, whether that is the first money he paid me.

Q. Do you know whether he had paid you in full on that date the $2,500?

A. As a question of independent memory, I could not say with certainty, but my impression is that he did owe me some balance, and that he mentioned about handing it to me on the day he made that agreement, the 17th of January, 1881?

Q. Did you state to Mr. Mason what the expenses of the business were likely to be?

A. I did not know anything about it. The statement made was that it would involve the expenditure of a large amount of money, and that was all that was said as to what the amount would be.

Q. Did you keep an account of those expenses after the 17th of January, 1881?

A. No; I went to him from time to time as the bills had to be paid and expecting adjustment of the matter when it was fresh in our minds.

Q. You have no account of it on your books now?

A. None. I have bills in the office connected with it and accounts with printers and stationery dealers, etc., and of course my clerk hire and office rent is a matter easily reached.

114 Q. Did you at any time render bills to Mr. Mason of the expenses?

A. No; he did not ask for any bills. When I went to him for money there was none asked for. I stated a specific sum, I think, at the interview at his house on I street.

Q. When was that?

A. I think it was right away after he returned from his trip. I am not certain whether it was the last of August or the first of September, 1882.

Q. But from the 17th of January, 1881, up to that time you had never rendered Mr. Mason any account of the expenses of your business in this connection?

A. No. I had called on him for money and he never asked for any account.

Q. Was not the first money that you received from Mr. Mason after January 17, 1881, save the payment of the balance on the $2,500, the sum of $15, by his check on Lewis Johnson & Co.?

A. I cannot state whether that was the first money I ever received of him or not.

Q. Have you any recollection of receiving any other before that?

A. I have no recollection of any one payment, of the date, or the amount. I know that he paid me some unimportant sums of money on account of the expenses.

Q. When you first called on Mr. Mason for money on expense account after January 17, 1881, did he then decline to pay any?

115 A. Mr. Mason never declined to pay money on the expense account until the final interview with him at his house. He had always admitted his responsibility and said that he would pay.

Q. Did you keep no account of the moneys that Mr. Mason paid you?

A. Not at all.

Q. Look at the check I now hand you—on Lewis Johnson & Co., dated March 7, 1881, to your order and signed by George Mason—and say whether that is your endorsement on the back.

A. Yes; that is my endorsement.

Q. Was that a payment on expense account?

A. I presume it was. That is about the sums he paid me when he paid me money on expense account.

Q. And was it used for that purpose?

A. Undoubtedly.

Q. As a matter of fact was that $15 not borrowed of Mr. Mason to be used by you on expense account?

A. I never borrowed any money of him to be used on expense account except as to the notes that I gave. That is the best of my recollection.

Q. Look at the pencil writing now handed you and state whether it is your writing.

A. It looks like my writing.

Q. Have you any doubt about it?

A. No.

Q. Does not that refer to the $15 in question?

A. Well, I cannot tell anything about it. Mr. Mason bor-
116 rowed money of me and I borrowed money of him, and so with reference to that, if that is the paper, that is a loan I secured from Mr. Mason which was not paid on expense account. It was a transaction I have no recollection of.

(Mr. COLE: I give this paper here in evidence.

Mr. PHILLIPS: To the admission of which I object for the reason heretofore given.)

(It is agreed between counsel that a copy thereof may be here filed in evidence, to have the same force and effect as and in lieu of the original which is to be produced at the hearing of this cause if called for.)

And copy of said paper is herewith filed in evidence and is as follows, being marked—

EXHIBIT A. H. No. 1.

"I have been out to borrow some money and cannot get a dollar today—that is, it seems so now; will send the $15 up as soon as I can get hold of it; have nothing today to pay the postage on a 1,000 letter that ought to go out today.

"H. SPALDING."

Q. Do you remember in March or April, 1882, having a conversation with Mr. Mason, in which you stated that you needed $200 or thereabouts for expenses and proposed borrowing the same from

Mr. Armes, and that thereupon a note was made for $200,
117 signed by you and endorsed by Mr. Mason, upon which a loan was made by Mr. Armes, and that you received $100 of the money and Mr. Mason $100 or thereabouts, and that the note was paid by you and Mr. Mason at its maturity?

A. I have no independent recollection of that transaction. I was embarrassed to obtain the money for the expenses, and when Mr. Mason failed to respond I borrowed money in the best way I could.

Q. Did not Mr. Mason pay his share of that note, $100 or about that, in small sums to you before the maturity of the note, and when the note was due did you not take it up?

A. Well, I cannot recall the facts inquired of.

Q. Have you no recollection about that transaction?

A. None whatever.

Q. Do you not remember meeting Mr. Armes in company with Mr. Mason on F street and that you made the loan of him?

A. No. I loaned Mr. Mason on the 13th of May, 1882, $98 and took his due bill for it. I will state this, that if I obtained $200 of Mr. Armes I obtained it on my own credit; in fact it was a loan to Mr. Mason whatever he had of the $200. Mr. Armes declined to let me have money on Mr. Mason's credit. He said that he would let me have it.

Q. Did you make any loans to Mr. Mason prior to the time when these postmasters' claims were allowed and paid in part?

A. Yes. I was astonished one day when Mr. Mason came into my office after these failures to advance me the money for expenses and asked me to loan him $500. I looked at him and did not
118 know what to make of him. I had made about $7,000 or $8,000 in an unexpected business transaction and had a little money that had given me credit to go on with the work without calling upon him for the money under his agreement. On June 3, 1882, I loaned him $500.

Q. For how long?

A. Afterwards he sent me a letter, stating that the check he gave me in payment of that $500 was money that he paid me on account of expenses for this business. I have his written statement of that.

Q. What date was that?

A. He borrowed that of me on June 3, 1882, and paid it on June 10, 1882.

Q. What is the date of his written statement in which he says that it was paid on expense account?

A. In August, 1887.

Q. That was in correspondence in relation to an adjustment of this account?

A. That statement was made in the first demand Mr. Mason ever made of me for an accounting under this written contract.

Q. How long after was it that the $500 was repaid.

A. He paid it, I think, on June 10, 1882—about a week afterwards.

Q. At that time you were in funds?

A. I had made $7,000 or $8,000 and I relieved Mr. Mason by running his Post Office business on my increased credit.

Q. You referred in your examination of yesterday to a demand you made upon him at one time when he was East, in
119 Massachusetts, I think. That was by letter, was it not?

A. I do not know that I referred to that. I had in June—well, between the 3rd of April, 1882, and the end of June I had a number of interviews with Mr. Mason, wherein he agreed to raise a large sum of money to enable me to go to Tennessee and employ ex-Senator Bailey to aid in a favorable report on securing (successfully) the bill which was opposed in the committee.

Q. How large a sum of money did you demand of Mr. Mason in this connection?

WITNESS: At the interview I had with him?

Mr. COLE: Yes.

A. I stated to Mr. Mason that in order to have an amicable settlement of the matter and go on without any trouble I would accept from him one thousand dollars to make good the one-fourth of the expenses from the date of the contract up to the date of the interview, and for the time being, so long as the expenses were running as they were then, I would accept fifty dollars each month for one-fourth of the current expenses.

Q. I inquired what sum you demanded of him at the time you refer to when you were contemplating going to Tennessee to see ex-Senator Bailey.

A. There was no sum named. We discussed the matter and he advised that I should go there, and we debated the question
120 and came to the conclusion between us that it would require a large sum of money—we did not know how much—to get him to come up and take hold of the matter.

Q. Was he then Senator?

A. Oh, no. Senator Bailey had previously reported the bill favorably, and we believed with his knowledge of it and his acquaintance with the Post Office Committee of the Senate (Senator Maxey was obstructing the bill) that he could render more effectual service than anybody else in the United States that we could think of, and he said that he would raise the money necessary to go there.

Q. In the summer of 1882, while Mr. Mason was gone East, did you not write to him to raise a sum of money to be used in this business, say about $10,000?

A. It may be possible. I was indignant that he had failed to raise the money when needed, and that he went away without a word of explanation, and I wrote an indignant letter to him in regard to it; I preserved a copy of that letter, but I have lost it.

Q. Did you not get an answer from him saying that he could not or would not obtain the money?

A. I never received any answer from him.

Q. Did you not then write a second letter which was unfriendly in its tone and abusive?

A. It may be possible that a second letter was written, such a

letter as you speak of; I have forgotten, but my recollection is that I wrote him one letter and that was an indignant one.

121 Q. If you did demand of Mr. Mason the payment of $10,000 in the summer of 1882, was it for the expenses of this business?

A. It would be a reasonable sum in view of the continued litigation and of the past litigation.

Q. You do not mean to say that your expenses from January 17, 1881, to the summer of 1882 were $10,000?

A. If there was a proper statement of the case it would amount nearer to that than a less sum. I never kept an account of expenses. This statement I prepared in the answer was made from imperfect data and, as I believed at the time, a good deal less than the actual amount.

Q. How long was it before Mr. Mason's return from the East that you had the interview with him at his house?

A. I cannot recall. I was so vexed at what he had done or failed to do that I determined that I would call at his house and have a final settlement, but whether that was immediately upon his return I cannot state. I am inclined to think that there was one or two intermediate interviews, in which I stated to him that I wanted money, but I cannot state further any distinct recollection.

Q. In that interview you abandoned all claim upon Mr. Mason for the expenses of this business, did you?

A. No; I did not abandon all claim upon Mr. Mason. I stated to him that if he did not comply with his agreement I should consider that he had by his own default ended his connection with it.

122 Q. Well, he continued in default?

A. Yes, sir.

Q. And you called upon him for no more money?

A. I never called upon him for any more money about the expenses at all.

Q. Therefore you did abandon your claim against him for expenses, did you not?

A. Mr. Mason's connection with the matter was ended by his refusal to comply with his contract.

Q. Do you mean that his connection with the whole matter ceased—that is, his rights under the written contract were determined at that time?

A. I had no doubt of it in my own mind, and I acted upon that theory.

Q. You are a lawyer, are you not?

A. Yes.

Q. And you believed that you could divest Mr. Mason of his vested rights in those claims by saying to him that he might have $10,000 if you were successful, and otherwise nothing?

A. That is not exactly the way I put it.

Q. What was the way you put it?

A. Well, I will state it. I believed that Mr. Mason, without a full performance of his contract on his part, had no legal claim

upon me. That was exactly what I believed at the time of that interview.

Q. Please state again just what took place at that interview between you and Mr. Mason.

A. Well, if you will refer to the testimony that I gave
123 yesterday you will find an accurate statement of what occurred there.

Q. You made that statement from your recollection as it was on yesterday?

A. Yes, sir.

Q. Please make another statement as to your recollection of today.

A. There is some of the conversation or some of the statements made which, of course, could not be recalled, but I went to Mr. Mason's house with a full determination to make him these propositions. One of the propositions that I determined to make him was that I would accept this small sum of $1,000 to make good his prior default, and would accept fifty dollars a month from that time on provided it could be so arranged to go on in a friendly way until the end of the litigation.

Q. You are now giving the interview of September 1, 1882?

A. Yes; at his house.

Q. Please state it fully.

A. Well, that is one of the propositions I made to him, that I would accept from him $1,000 to make good one-fourth of the expenses from the time of that contract up until that time without going into any figuring about it. It was a nominal or small estimate that I put on it in order to induce Mr. Mason to comply in some part with that contract, and the same is true with reference to the $50 a month. I wanted to present to Mr. Mason's mind,
124 and did present to his mind, the greatest possible inducement that I could to prevent any difference or controversy between us.

Q. Please state what actually took place and not your motives.

A. Well, I offered Mr. Mason that if he would pay to me the sum then of $1,000 and the sum of $50 so long as the expenses would not increase each month I would go on under the agreement with him until we reached a final result in respect to the claims I contracted about. Mr. Mason made no satisfactory reply. I do not think he replied at all. I made him then a proposition that I would raise in some way the $2,500 that he had paid to me and return it to him, and that I would then go on and raise the money in the best way I could and conduct the business through to the end, and when I got through with it, if I succeeded, I would pay him $2,500 as a bonus for the $2,500 that I had of him. I did not get any answer to that. I then proposed to Mr. Mason that it should be considered between us that there was an end of his connection with the matter; that I would raise the money and go on and prosecute the claims, and if I succeeded in effect- collections I would—if he would bind himself to that or if he would agree to it, I would bind myself to pay him $10,000. I stated that his claimed interest in the matter

was an obstruction to carrying on the litigation successfully; that the money had to be raised, and that for him to claim an interest in the matter was an obstruction to me and embarrassed and
125 endangered success. He then made reference to the estimate that we had put upon his one-fourth of the fees, $25,000, when the agreement was entered into and said that he thought about $20,000 would be about right. I then arose and stated to Mr. Mason that inasmuch as he would not accept either of the propositions that by reason of his default in not furnishing the money as he had agreed to furnish I considered that he had no longer any legal right in the matter, and that I should from that time on conduct the business as my own business without any regard to the arrangement that we had previously had, and that when I got through, if I succeeded, I would pay to Mr. Mason such sum as might be right in consideration of the $2,500 that I had of him to use in my business.

Q. And that ended that interview?

A. Yes.

Q. And you regarded it as ending Mr. Mason's rights in the whole matter?

A. From that time on I believed Mr. Mason had no legal rights under that contract.

Q. How long after that was it that you applied to him for a loan of money to aid you in the prosecution of your business?

A. O, well, Mr. Mason, after the passage of this act, came around again. For a good while I did not see him. He came around after I got this act passed and appeared to be very friendly, and would come into the office and talk and chat, and he would come
126 around and take me out riding and chat and talk with me, and the matter went on so that he borrowed money of me and I borrowed money of him; but never one word was said about this talk at his house or about the contract, and still our relations were such that he borrowod money of me and I borrowed money of him. I cannot state the dates, but the notes themselves will show when we borrowed money of each other.

Q. Did you not borrow money of him between September, 1882, and March 3, 1883?

A. Oh, well, I do not know. I should say that I did not; but I have no distinct recollection of it.

Q. You may have done so.

A. It may be possible.

Q. As much as $500?

A. It may be. I needed the money, and if he would loan it to me, of course, I borrowed it from him.

Q. Then that interview did not destroy the amicable relations between you and Mr. Mason?

A. Mr. Mason, as I say, seemed just as friendly as ever after the bill passed.

Q. Well, was he not before?

A. I do not think I saw much of Mr. Mason after that interview until after the bill passed. I had an office downstairs and I had

this office upstairs. My son reported that he called several times upstairs, but he did not call on me.

Q. Did you not from time to time state to Mr. Mason, as you received claims, about the numbers that you had received for
127 prosecution?

A. Oh, well, very likely if he had asked me. I talked with him with the utmost freedom, as I did with every other friend who came into the office.

Q. You continued that from the time you made the contract down until the close of the business?

A. I never sought an interview with Mr. Mason at all about this business after that interview.

Q. I was not asking you that. My question is whether or not you did not report to him the number of cases you received for prosecution from time to time.

A. My answer to that question is that I did not report to him at all.

Q. Did you not tell him how many claims you received from time to time?

A. If he ever asked me how many claims I received, I told him.

Q. Did you not tell him without his asking you?

A. Never, to my knowledge. Of course, when he was in the office and talking about matters there might have been some allusion to the way the claims were getting along, etc., but there was no recognition of the contract between Mr. Mason and myself under that contract after that interview.

Q. Did you not report to him the amount of fees collected from each of the three several appropriations?

A. No. He asked me when the first appropriation was made some questions about the amount, etc., and he asked me if I
128 could not let him have some money. I paid him $500 and gave him a check for it.

Q. Paid on account of his interest in the cases?

A. On precisely the account I left with him at the interview at the house. I stated to Mr. Mason that I should pay him the money and pay him what might be right if I succeeded in collecting the claims.

Q. Did you not state to him what you considered might be right?

A. I stated, if he would agree, that I would bind myself to pay him $10,000; that if he did not make the agreement I would not be bound to pay him any particular sum, but whatever might be right.

Q. Inasmuch as he did not make that agreement, you stated that you should pay him what might be equitable?

A. Yes.

Q. What you considered to be equitable?

A. Oh, what might be considered equitable.

Q. Who was to determine what would be equitable?

A. Well, I might determine that as well as anybody. If he was not satisfied with it, he could——

Q. (Interrupting.) Did you at any time, either before the first of

September, 1882, or afterwards, state to Mr. Mason that there was a class of claims which you were prosecuting that he had no interest in?

A. Oh, I never made any statement about his having any interest in them. No allusion to his interest in any conversation
129 ever occurred between Mr. Mason and myself after that interview with him upon the subject of his interest, excepting at one time he came into my office with the opinion of Mr. Brewster, which he had been running around a good deal about, and I asked him not to make himself so officious about this matter, as it was none of his concern; that this fight was my fight and my business, or words to that effect. I was disgusted about his running around about the cases and made some reference to this interview at his house in support of that.

Q. At the time that he was loaning you money to prosecute the claims—the claims in 1883 and 1884—you never mentioned to him that he was interested in only a small proportion of the claims?

A. He never had had any interest in my view of the case except as stated at the house; he always knew it, and there was never anything else said about it.

Q. You say in the twelfth paragraph of your answer to the complainant's bill, referring to the 4,208 cases, that no account thereof has ever been demanded by the complainant. Did you not, on or about the 9th of August, 1887, receive a letter from the complainant, requesting an account of the cases covered by the contract?

A. That was the first letter that he wrote about it. About the first of August he came into my office upon an errand and he slipped a paper in my hand and withdrew, and made the remark or
130 something about now there was the time to look over the accounts; there were two or three letters followed. I do not know which of them it was in which he made a demand, as I think, covering all the business that I originated after March 3, 1883.

Q. Will you please produce the letter of August 9, 1887?

A. I have in my hand a letter in the handwriting of Mr. Mason, purporting to have been written on August 9, 1887.

Q. Will you file that letter or a copy of it with your deposition?

A. After I have copied it I will.

(Mr. COLE: I here give in evidence a copy of said letter, which it is agreed may be filed in lieu of and have the same force and effect as the original thereof would have.

Mr. PHILLIPS: To the admission of which I object for the reasons heretofore stated.)

And the same is herewith filed in evidence and is as follows, being marked—

EXHIBIT A. H. No. 3.

"WASHINGTON, D. C., *Aug.* 9, 1887.

Mr. Spalding.

DEAR SIR: I would like, now that there is a little relief from the pressure of business, to make an approximate settlement of our ac-

counts, and to that end ask that you will make me a statement showing amount of fees collected from 1st, 2nd, and 3rd ap-
131 propriations respectively, and my percentage of the same; also outstanding fees from each of the above appropriations; also state payments made to me, including discounted notes of which I have had the benefit.

I hold your notes as follows:

Nov. 21, '83, $250.00; Dec. 15, '83, $250.00; Mar. 31, '84, $100; Mar. 29, '84, $100; Apr. 7, '84, $100.

Yours truly, GEO. MASON."

Q. That is the letter that you have heretofore referred to in which you say that Mr. Mason demanded a credit for the $500 on expense account, or words to that effect?

A. No; it is not that letter.

Q. Look at your letter of August 10th, 1887, and say if it is your answer to Mr. Mason's letter of August 9th, 1887.

A. Yes; it appears to be an answer to that letter. It is written, I think, at my dictation.

Q. You signed it?

A. No.

Q. Did you authorize it?

A. Yes.

(Mr. COLE: I here give in evidence copy of said letter, which it is agreed may be filed in lieu of and have the same force and effect as the original thereof would have.

Mr. PHILLIPS: To the admission of which I object for the reasons heretofore stated.)

132 And the same is herewith filed in evidence and is as follows, being marked—

EXHIBIT A. H. No. 4.

" WASHINGTON, D. C., *Aug. 10th*, 1887.

George Mason, Esq.

DEAR SIR: I find, on looking over some of my papers, the following payments to you, viz:

Check at Lewis Johnson & Co., Aug. 26, '84	$50	
Note Riggs & Co., July 25, '84	250	
" " " Sept. 27, '84	200	
" Lewis Johnson & Co., May 19, '85	250	
" " " " June 10, "	300	
Sundry payments prior to Dec. 14, '86	120	
Check No. 121	100	
Dec. 29, '86. Check No. 143	100	
Jan. 4, '87. " " 158	100	
" 7, " Paid note to May's bank	202	10
" 25, " " "	404	20
Feb. 2, " Note	800	
Jan. 12, " " paid (see c'k No. 567)	303	68
Nov. 23, '86. Cash	100	
The total of these is	$3,279	98

I cannot state what other payments have been made.

It would be a tedious and useless task to undertake to enter into a computation to determine what amount, if anything, has been received as fees upon the postmasters' claims in excess of the
133 outlay I have made.

You are aware, because the matter has been repeatedly referred to, that the claims referred to in the memorandum which I gave you in consideration of the $2,500 I received from you, having reference to the bill then pending in Congress, which afterwards failed, have scarcely been touched upon so far as any allowances have been made and so far as any fees have been received.

Very respectfully, HARVEY SPALDING.
G. C. C."

Q. In your letter (Exhibit A. H. No. 4) of August 10, 1887, in answer to Mr. Mason's letter (Exhibit A. H. No. 3) of August 9, 1887, you say:

"You are aware, because the matter has been repeatedly referred to, that the claims referred to in the memorandum which I gave you in consideration of the $2,500 I received from you, having reference to the bill then pending in Congress, which afterwards failed, have scarcely been touched upon so far as any allowances have been made and so far as any fees have been received."

Is that true?

A. That is absolutely true. The claims that were made and referred to in that writing have not been paid at all, but there have been some allowances to the same persons on different claims under the new rule of construction.

134 Q. Have you not in your answer in this cause admitted the receipt by you of over $36,000 of fees on this very class of cases?

A. Well, the answer will show for itself. Whatever I stated there is true, and this statement is true also.

Q. These letters were followed by considerable correspondence between you and Mr. Mason, looking, upon his part, to an adjustment of the matters between you?

A. Yes. He wrote me that if I did not settle with him my business would be ruined; that he would ruin it by some proceedings which he would take.

Q. In what letter was that?

A. In a letter dated October 1, 1887.

(Mr. COLE: Solicitors for complainant now inquire of the witness whether this was the correspondence upon this subject which passed between the complainant and defendant, as contained in this package of letters dated, respectively, August 15, 1887; September 2, 1887; September 3, 1887; September 7, 1887; September 8, 1887; September 9, 1887; September 10, 1887; September 26, 1887; September 27, 1887; October 1, 1887; October 1, 1887; October 5, 1887; October 20, 1887, and October 20, 1887.)

WITNESS: I admit that this correspondence took place between Mr. Mason and myself.

Mr. COLE: I here give in evidence copies of said letters,
135 which it is agreed may be filed in lieu of and have the same force and effect as the originals thereof would have.

Mr. PHILLIPS: To the admission of which I object for the reasons heretofore stated.

And the same are herewith filed in evidence, being marked, respectively, Exhibits A. H. No. 5 to 18, inclusive, and are as follows:

EXHIBIT A. H. No. 5.

"WASHINGTON, D. C., *Aug.* 15, 1887.

Harvey Spalding, Esq.

D'R SIR: In reply to your favor of 10th inst. I find within the period covered by your statement of account memoranda as follows:

Checks on Riggs & Co. to your order & endorsed by you:

Sept. 15th, 1884	$400 00
" 17 "	250 00

Checks on Second Nat'l bank to your order & endorsed by you:

Nov. 12, 1886	$300 00
" 27, "	300 00
Apr. 25, 1887	200 00

I also have a check paid to my order, but marked on stub 'for H. S.:'

April 23rd, 1886	$350 00

You will remember that one sum of money received by me from you in 1885—probably the check on L. J. & Co., June 10th,
136 1885, $300.00—was a loan, and a part of it returned very soon thereafter, leaving an unpaid balance to your credit of $100.

You will also remember with reference to the notes now outstanding that the proceeds of the note for $725 discounted about the 8th or 9th of May were paid to you, and that the note for $700, 11th or 12th of Aug., was a curtail of that.

I find entries to your credit on a book of accounts made in 1885 and 1886 as follows:

1885, May 19.	By	c'k	L. J. & Co	$250 00
" "	"	cash		100 00
	"	"	(bal.)	100 00
1886, Oct. 16.	"	"		20 00
" 19.	"	"	ch'k 2nd Nat'l b'k	100 00

With this data I think we can straighten out this somewhat intricate and too long neglected account and can then keep it straight.

I did not allude to the expenses in my note of inquiry, for our agreement expressly provided that my interest was not to be chargeable with any expenses. I recognize the fact, however, that heavy expenses, not anticipated at the time of our agreement, have been

incurred by you and which would perhaps be a subject for equitable consideration in a just and honorable settlement between us; and in this connection you will not forget that I have done something—as much as I felt able, in view of my circumstances and existing obligations, if not what you thought I ought to have done—in this direction, as will appear from vouchers I hold to your order and with your endorsement as follows:

137	Mar. 7, 1881.	C'k L. J. & Co.	$15 00
	Aug. 6, "	" " " " "	15 00
Mar. 16, 1882.		Note 30 days.	250 00
May 18, "		C'k L. J. & Co.	50 00
June 10, "		" Riggs & Co.	500 00
" 20, "		" " "	200 00
" 24, "		" " "	125 00
Oct. 18, "		" L. J. & Co.	35 00
		Total.	$1,190 00

(Your receipt for final pay't on contract in full, $2,500, was dated Feb'y 21, 1881.)

I do not comprehend the import of your last paragraph. You certainly cannot mean that the claims adjusted and now being adjusted by the P. O. Dep. under the act of Mar. 3, 1883, an act drafted and its passage procured by you for the settlement of those claims growing out of the non-execution of the act of June 12, 1866, were not the claims contemplated in and covered by the terms of our agreement. That you and I differ with the constituted authorities as to the proper construction of that act does not alter the case. The act has been construed by authority, and the adjustments and payments have been and are being made in accordance with that construction; and right or wrong we must accept that construction until we can procure one more favorable to our views from some higher authority.

What I desired to get at by my letter of inquiry was a set-
138 tlement of our accounts, partially covered by your statement, an adjustment of my interest in the collections made, and a more definite understanding as to the future.

Hoping that we may be able to make such a settlement as shall be just, equitable, and mutually satisfactory, I remain,

Yours truly, GEO. MASON."

EXHIBIT A. H. No. 6.

"WASHINGTON, D. C., *Sept.* 2, 1887.

Harvey Spalding, Esq.

D'R SIR: On the 15th ult. I addressed you a note in reply to yours of 10th, which seemed to raise some question as to our relations in regard to the pending adjustments in the P. O. Dep. As I have received no reply, I presume it may have been overlooked. I therefore respectfully call your attention to it and ask that you give

it your immediate consideration. Let us understand each other, to begin with; then we shall know how to deal with difficulties, if any exist, which I am not yet willing to admit to myself do or can.

Yours truly, GEO. MASON."

139 EXHIBIT A. H. No. 7.

"WASHINGTON, D. C., *Sept. 3rd*, 1887.

George Mason, Esq., # 1020 Vermont Ave., city.

SIR: I have received three singular notes from you, the last one under date of Sept. 2nd, 1887. I received the one dated August 15th just as I was leaving for Atlantic City.

One of the pecul-arities of that letter was the use by you on the third page of it of the payment by you of a temporary loan by me and two or three temporary loans by you to me, which were paid, as the basis of an aggregate of $1,190 of money furnished by you towards the prosecution of postmasters' claims. The two fifteen-dollar ($15) items in that statement is about all the money you actually furnished, and you have my protest in writing, if you have not destroyed it, made about this time, because you failed to comply with your agreement made after the failure of the measures, mentioned in the memorandum, to bear a proper share of the burdens of the further proceedings after the failure of those measures.

In your last note you say, 'Let us understand each other, to begin with.'

It is impossible, as it seems to me, that you should fail to understand me. The original contract related to four thousand postmasters' claims, seventeen hundred of which were then in hand and twenty-three hundred of which were to be afterwards obtained.

140 The measures then pending in Congress which were the basis of this contract failed in January, 1881, and the efforts afterwards made on behalf of those measures failed completely on the 3rd of March, 1881. You then agreed to share a proper part of the burden of the prosecution of the claims, and you failed to comply with this agreement, although I was in the greatest distress for means to carry on the litigation and made repeated appeals to you to comply with your agreement. Finally, upon your persistent default, you received notice from me of the termination of the understanding between us, coupled with a statement on my part that I should proceed without your aid, and in consideration of the fact that twenty-five hundred dollars of your money had been used I would pay you at the end of the litigation ten thousand dollars.

From that day to this there has been no change. On the contrary, the same notice has been repeated in substance.

Upon this basis I have made you large payments and you have accepted the same upon this basis.

I am not able to give a complete statement of all the payments. The following, however, are among them.

In the statement for convenience I have numbered the vouchers.

Voucher #1, check Lewis Johnson & Co., Aug. 26, 1884..	$50	00
" 2, " Riggs & Co., Sept. 11, 1884.....	500	00
" 3, " Lewis Johnson & Co., May 19, 1885.	250	00
" 4, " Second National bank, Oct. 4, 1886...	100	00
141 Voucher 5, check Second Nat'l bank, Oct. 19, 1886, $100; receipt for cash, $20.....	120	00
Voucher 6, check Second National bank, Dec. 14, 1886.	100	
" 7, " " " " Dec. 29, 1886.	100	
" 8, " " " " Jan. 4, 1887..	100	
" 9, " " " " Apr. 18, 1887.	200	00
" 10, paid note to W. M. Mayse & Co., Jan. 7, 1887	202	10
" 11, proceeds of my note, Second Nat'l bank, Feb. 2, 1887.....	800	00
" 12, check Lewis Johnson & Co., June 10, 1885.	300	00
" 13, receipt for cash (see #5), Oct. 19, 1886.....	100	00
Voucher 14, proceeds and interest of my note of May 11, 1886, for $500, paid in part by a rediscount Aug. 17, 1886, of $400, paid by a rediscount of $400 Nov. 3, 1886, and the principal, $400, paid on my check Jan. 26, 1887, and also $10.50 interest on the two notes, in all.....	410	50
Vou. 15, paid note of $300, dated Oct. 6, 1886, at Second National bank, renewed Nov. 10, 1886, and paid by my check Jan. 12, 1887, principal and interest	303	68
Total.....	$3,636	28

Voucher 12, for $300, you claim to have paid $200 upon.

Voucher- 14 and 15 require some further consideration, and the examination of my bank book, which I have not in the office.

Besides these I have notes paid by me at Riggs and Co. bank which relate to our borrowing and lending prior to the date of these payments, and of course I have checks for considerable sums
142 of money paid you before that time. I have also a note paid to your order of $500, money had from Mr. Arms. I presume I have other notes of this sort. I have nearly forgotten the particulars of that transaction. I have yet to overhaul a great mass of papers, and I think that the money transactions between us can be explained and understood by both parties. The money I have paid you has been paid upon the basis of the payment to you of an aggregate sum of ten thousand dollars, which, when you failed to comply with your agreement, I stated to you that I would pay to you as full consideration for the twenty-five hundred dollars received from you.

Any further sum will be paid upon the same basis until the aggregate of ten thousand dollars shall be reached, and I shall pay you no money upon any other basis.

As a matter of course the full amount of balance that may be due you upon the loan account between us will be paid.

I have heretofore referred to the fact that if the original contract had not been terminated and a different contract been substituted in place of it in consequence of the wholly unlooked for events which followed that contract four thousand claims would be covered by it, namely, the seventeen hundred claims which I had in hand at that date and twenty-three hundred additional claims which I secured afterwards and before the passage of the 'Spalding act.'

There has been absolutely no payments made upon these claims upon the basis described in that contract.

143 There has been comparatively a small amount paid upon these claims upon a totally different basis, namely, the basis of the act of August 4, 1886.

Your letters are peculiar, and, in view of them, I suggest that it is too late to repudiate the basis upon which you have received this sum of money.

Certainly if you propose to make the attempt you ought first to repay the money.

Very respectfully, HARVEY SPALDING."

EXHIBIT A. H. No. 8.

"WASHINGTON, D. C., *Sept.* 7, 1887.

Harvey Spalding, Esq.

SIR: Answering your letter of 3d inst., I will say I now understand you. I did not before. That you may not misunderstand me let me add to what I have before said this: There has never been but one contract between us relating to the P. O. claims. That contract is in writing, signed and sealed, and in terms too plain and definite to be misunderstood. Its requirements on my part have been fully complied with and it bears your endorsed acknowledgement to that effect. It embraces all claims prosecuted by — for adjustment of salaries of postmasters under the act of March, 1883, which was the 'substance' House bill 3981 therein

144 referred to 'enacted into law,' and it entitles me to one-fourth of all your interest in said claims then in hand and all you might thereafter secure and one-fourth of all your fees therein free from all charges for expenses of prosecuting said claims to collection thereof. The sums of money received by me from you have been received on account of my share of those fees and with no other understanding on my part or intimation from you of any other understanding or agreement whatever. I expect a settlement with you on that basis. I may or may not be mistaken as to the amount of money contributed by me to help you pay expenses pending the passage of the act of Mar. 3, '83. I think I am not, but it is immaterial. Whatever sums of money I did so contribute were gratuities, paid without obligation on my part or consideration from you, for which, I may add, I have not even received your grateful thanks.

As to the account stated by you, I think your charges designated as vouchers No. 3, 4, 5, 6, 7, 8, and 11 are correct. No. 1 & 2 were settled by me at the time, as were all transactions except your notes referred to in my communication of the 9th ult. I own to May 19, '85, when you gave me your check for $250, which I then entered on my book as a first credit to you. Voucher No. 9 was paid by my check of Apr. 25, '87. I think I furnished the money to pay voucher No. 10. Now, 12 should be reduced by a credit to $100.00. No. 13 is included in No. 5 and should not again appear. No. 14,
I think, was settled by me. No. 15 was paid by my check
145 of Nov. 12, '86. Now, let me refresh your memory by two or three circumstances which may throw some gleams of light on these doubtful and disputed items. When you paid me the $250 you asked me what I had done with your notes, and I replied that I had them laid away in my safe. Your mind and mine then went back to the only unsettled transactions between us. My mind is clear that I entered the credit in the full consciousness that it was the beginning of the long-expected payments on account of these claims. Some time ago, on giving me a check, the first, perhaps, from the third appropriation, you asked me what payments I had received from you. I then recited them to you from memory. You then produced a jacket and showed me some prior note or notes which I said had been settled. You did not dispute the assertion, but made the doubtful remark that you did not see how you came by the note if I paid it. My recollection then was and is now that I paid a note of yours and returned it to you. In some instances I brought you money to meet your notes which I had used; sometimes I gave you checks.

The Arms notes were accommodation endorsements by me for your benefit. I only recollect one note of yours of which I received the ultimate benefit, the one for $800. Another circumstance will perhaps refresh your memory. I came into your office and asked you for some not very large sum of money and you answered me very abruptly that you could not let me have it. After a moment's
reflection you explained apologetically that you had been
146 terribly worried by a certain person whom you named. You said he talked to you as though he thought you did not intend to pay him. I think you then explained to me how, through whom, to whom, for whom, for what amount, and for what purpose you had given a certain obligation which had troubled you to pay. I replied that I did not want to embarrass or worry you, but I was in need of money. I could, however, get along then with one hundred dollars, and if you would let me have that sum and later your note I would not further trouble you till the next appropriation. You complied and gave me your check Jan. 4, '87. The note when given was for $800. I did not again trouble you, but took care of all your papers which I had used.

Yours truly, GEO. MASON."

EXHIBIT A. H. No. 9.

"WASHINGTON, D. C., *Sept. 8th*, 1887.

George Mason, Esq., Vermont Ave., city.

SIR: I have received your letter of the 7th inst. in which, amongst other things, you comment upon the items of payment to you set forth in my letter of the 3rd inst.

Since my letter was written I have found that upon voucher twelve (12), check to your order, Lewis Johnson & Co., June
147 10, 1885, for $300, you repaid on the 2nd of July $160. I think also that there is some reason to suppose that voucher nine (9), check to your order, April 18th, 1887, Second National bank, was repaid by your check on April 25, 1887, for $200.00. It is also possible that the receipt for $100, dated Oct. 19th, 1886, covers the check for $100, same date, in voucher five (5).

Vouchers one (1) and —(2) were never repaid by you. I remember distinctly paying you the $500, and that the check of May 19th, voucher three (3), made the amount I had paid you $800 on that date, to which was added $140 on the 10th of June, making $940 paid you at that date.

I have examined carefully the papers with reference to vouchers fourteen (14) and fifteen (15), and I find the facts to be as follows: On the 17th of August, 1886, you obtained on my note at the Second National bank $400. This note I paid at maturity, namely, November 18th, 1886.

On the 23rd of November, 1886, you obtained on my note at the same bank $400.

On the 27th of November you paid me of the proceeds of this note your check for $300.

I paid the $400 note, dated November 23, 1886, on the 26th of January, 1887.

On the first of these transactions you are chargeable with $400, and on the second you are chargeable with $100, the amount on both being $500.

On the 6th of October, 1886, you obtained on my note for
148 one month on the Second National bank $300. This note I paid at maturity, namely, the 9th of November, 1886.

On the 10th of November, 1886, you obtained on my note for sixty days, at the Second National bank, $300. This note I paid at maturity. The proceeds of this second note, namely, $300, you paid to me by your check of November 27th, 1886. On the first of the two last-mentioned transactions you are chargeable with $300, and on the second you are chargeable with nothing.

On the four transactions you are chargeable, in the aggregate, with $800. Correcting what may be errors in my statement of the 3rd of September and without reference to a large number of transactions—notes, and so forth—the import of which I am not able at this time to state, the following is a correct exhibit of amounts of

money and dates of payment thereof which you have received from me:

August	6, 1884.	Check to Lewis Johnson & Co.	$50
September	1, 1884.	" " Riggs & Co.	500
May	19, 1885.	" " Lewis Johnson & Co.	250
June	10, 1885.	" " Lewis Johnson & Co., $300, less $160 repaid.	140 00
October	4, 1886.	" " Second National bank	100
October	16, 1886.	" " cash	20
October	19, 1886.	Check to Second National bank	100
December	14, 1886.	" " " " "	100
December	29, 1886.	" " " " "	100
January	4, 1887.	" " " " "	100

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January	7, 1887.	Note paid to W. N. Mayse & Co.	202 10
February	2, 1887.	Proceeds of my note, Second National bank	800 00
August	17, 1886.	Proceeds of my note, Second National bank	400
October	6, 1886.	Proceeds of my note, Second National bank	300
November	23, 1886.	Part of proceeds of my note, Second National bank	100
		Total	$3,262 10

Upon the Mayse note of $202.10, which I paid, you did not furnish the money or any part of it. The checks you refer to at Riggs and Co., in 1884, were probably used to take up my notes at that bank upon which you obtained money.

I have not looked into that question.

Respectfully, HARVEY SPALDING."

EXHIBIT A. H. No. 10.

" WASHINGTON, D. C., *Sept. 9th*, 1887.

George Mason, Esq., # 1020 Vermont Ave., city.

SIR: I have, in a letter dated the 8th inst., herewith en-
150 closed, replied to your comments in yours of the 7th inst. upon the subject of the amount of payments I have made to you.

I think that the attempted *coup d'état* of the same letter requires some notice.

At the time you wrote the contract mentioned I had registered in a book in my office the seventeen hundred claims mentioned in that contract and the other claims from which I expected to obtain enough to make up about four thousand, and the claims registered in the book, which was open to your inspection, constituted, with the seventeen hundred claims in hand, the subject of negotiation.

Many years after this, as the fruit of a great outlay of money and labor on my part, I reached a great number of other claims. These claims were never the subject of any negotiation between us, and they were unknown and unthought of at the time of the transaction you refer to. So far as I have made the proceeds of these claims my property, it would seem now that you desire to acquire title to a part of that property by a contract which was based upon certain registered claims not included in the great number of claims afterwards developed and secured by me.

For this purpose you propose to use an instrument drawn by yourself many years before the development of these claims. By the writing made, I think, early in 1880, you undertook to purchase from me 'one-fourth of all his (my) interest in said claims now in hand and all that he may hereafter secure' (the number
151 being stated in the contract about four thousand altogether), 'and one-fourth of all his fees therein.'

Now, inasmuch as not one of the claimants mentioned had any power to give me an interest in his claim, how much value did you take when you purchased one-fourth of my interest in such claims? And inasmuch as a fee cannot be sold in a Government claim until there has been a fee actually paid, how much value did you take by the purchase of one-fourth of my fees in four thousand claims when there had not been a dollar of fees earned on such claims?

That writing recites that I was then engaged in the prosecution of claims of postmasters and late postmasters for adjustment of their salaries in conformity to section 8 of the act of June 12, 1866, and that I had in hand seventeen hundred or thereabouts, and that I expected to secure in the aggregate, including those in hand, about four thousand in number, and that Senate bill # 903, this Congress, and the favorable report of House bill # 3981 had been secured, the substance of which he expects to be enacted into a law.

The whole contract is based upon the expectation of getting in the aggregate four thousand claims, seventeen hundred of which were then in hand and the collection of them on the basis recited through legislation to be secured in that Congress. As a legal instrument, although it was drawn by yourself, it is manifest that it is utterly without value, for the whole thing is in violation of law, and when the measures upon which it was based failed it is manifest that it had no value. After the failure of the measures you
152 conferred with me and agreed to share the burdens and expenses of further proceedings to enforce these claims, and you also agreed to take as your share of the fees in the claims mentioned in the contract one-fourth of three-fourths of the same instead of one-fourth of the whole; and all this was done in the presence of a witness. In view of these last-mentioned facts I ask you to state what you mean by the statement contained in your letter of the 7th inst. in the following words, viz: 'There has never been but one contract between us relating to the P. O. claims; that contract is in writing.' Following the new agreement made by you with me, you paid me in pursuance thereof certain small sums

of money. You now undertake to affirm that within a few months in 1882 you bestowed upon me a gratuity of $1,195.00.

I have to inquire respectfully, what is your purpose in making an absurd statement of this sort? Do you expect anybody to believe that you are giving away $1,195.00 to anybody as a voluntary contribution? The first contract was terminated by the failure of the measures upon which it was based. The second contract used the description of the first contract of the claims and the number, and stipulated for a share of the burdens on your part and a change by reduction of the interest you were to have in the claims, and this contract was ended by your default. I do not, as a question of law, owe you a dollar except as represented by unpaid loans; and if you repudiate the basis upon which you have accepted the large sum of money mentioned, that money belongs to me and not to you.

153 But as a matter of courtesy between us, in view of the fact that you paid me $2,500.00, not in the manner and at the times agreed upon, however, I am willing, in order that there be no possible grounds for dissatisfaction, to pay you ultimately a sum which, added to the sum already paid you, shall make ten thousand dollars.

The claims which were the subject of the original writing, about four thousand in number, can be easily pointed out in my office. In order to meet your views I will, if you will immediately accept the proposition, waive the fact that there is no existing contract between us and will also waive the fact that the original writing is an illegal instrument, and will agree to settle with you by paying you a sum which shall equal one-fourth of three-fourths of all the fees collected on the four thousand claims mentioned in the original contract which have been adjusted in conformity to section 8 of the act of June 12, 1866, the amount already paid, to be applied thereon, less your proper share of the expenses incurred from the date of the failure of the measures mentioned in the contract to the dates of the respective collections.

I think you are bound by the acceptance of the money upon the basis of the payment of ten thousand dollars at the end of the litigation, but I make you this offer, and I require an immediate acceptance or rejection of the same in writing.

In the opening of your letter of the 7th inst. you say, 'I
154 now understand you. I did not before.' This statement is as wild and unwarranted as the statements which I have already noticed. When, after different ineffectual efforts to obtain from you the share of money according to your agreement in aid of the further prosecution of the claims after the failure of the measures mentioned, I made a demand upon you at your house for a compliance on your part with your agreement so emphatic that you could never forget it, and when you failed to comply you received from me an equally emphatic notice that there was an end of the whole transaction by your own default, and that from that time forward I should carry the litigation on alone and at my own cost and for my own benefit, and that to avoid any dissatisfaction on

your part I should return to you the money you had paid to me and pay you a bonus of $7,500.00.

At the time of the discussion of the Brewster opinion this was repeated to you with equal emphasis at my office.

The first payments ever made on postmasters' claims were made in 1884, and so well were you aware of the status of the case between us that you never at any time demanded or asked for a share of the fees collected; and this went on without change for three years. To say now that you never understood me before is to deny a fact which you have had perfect knowledge of since the final interview between us in regard to the contracts mentioned had at your house on I street in 1882.

Respectfully, HARVEY SPALDING."

155 EXHIBIT A. H. No. 11.

"WASHINGTON, D. C., *Sept.* 10, '87.

Harvey Spalding, Esq.

SIR: I write in pain from a sprained wrist and must be brief. Omitting reference to the accounts for the present, I write on the other branch of your letter. Your law, your logic, your ethics, and your memory are about equally dishonored by it. The unblushing assertion that you, a Christian lawyer, came to me, your neighbor, with a written proposition to sell to me what you did not have and could not sell and were forbidden by law to sell, and, having made me believe otherwise, entered into a solemn contract which you now say was illegal and had no binding force upon you, and by virtue of that illegal and fraudulent contract took my money and appropriated it, without consideration or equivalent, looks to me like a self-accusation of having obtained that money by false pretenses, which in law is accounted a crime, punishable by severe penalties.

Your attempt to qualify that contract now by bold assertions avails nothing; the contract speaks for itself and does not warrant any such construction as you wish to put upon it.

I remember perfectly the three interviews you refer to, and in view reaffirm all I said in my last letter. The one which you say took place in presence of a witness was simply this: You asked
156 me for authority to promise on my behalf what you proposed to offer on your own to a certain person for a certain service to be performed by her. To this I consented. If you made such a promise to that person under that authority it will be duly honored by me.

I am unable to see how the fact that you made me an offer for my interest at a certain time, which I declined, and that you then became angry and used disrespectful language to me, however emphatic that language may have been, or that afterwards, when prospects did not look so favorable as at some other time, you said to me that I had better have accepted that offer, affects my rights one way or the other.

I decline your offers now, but will say again what I said substan-

tially in my letter of the 15th ult., that I will not object to bear such *pro rata* of the expenses of the offer as in an honorable and equitable adjustment of one might seem just.

But as I see no reasonable prospect of any agreement between ourselves in this matter, I propose a settlement by arbitration to avoid public scandal, which might result from litigation and seriously impair our prospects before Congress and with your clients. The referees, in case this proposition is accepted, should be lawyers of high standing and the proceeding should be in form of a suit in equity.

Awaiting your answer to this proposition, I remain,

Yours truly, GEO. MASON."

157 EXHIBIT A. H. No. 12.

"WASHINGTON, D. C., *Sept.* 26, 1887.

Harvey Spalding, Esq.

SIR: Replying to your note of the 8th inst., I am sorry to say I have not fully looked into the transactions at Riggs in 1884, for my book with them is mislaid. So far as the checks show I had your check on—

Lewis Johnson & Co., Aug. 6, 1884	$50
Riggs & Co., Sept. 1, 1884	500
	$550 00

You had my checks on Riggs & Co. of subsequent dates, to wit:

Sept. 15, 1884	$400
Sept. 17, 1884	250
	$650

If my checks were not in payment of yours, they would seem to be an overpayment. In regard to the $300 loan of June 10, 1885, I presume you are correct as to the repayment on the 2d of July of $160.00, but if so there was a second payment some days after of $40, and this accords with my recollection and the entry on my book. You spoke to me about the matter two or three times and I was trying to get the whole amount to return to you. I made you two payments, reducing the amount to $100, when you went away for a vacation. On your return you again asked me about it, if I would pay it or let it go on the account. I said I preferred to let it go on the account and then entered the credit on my book.

158 There is also a payment by me to you in person on the 23d of April, 1886, of $350, which is not applied in your statement.

If the charges in your statement are correct these credits should be applied:

Notes specified in my letter of	Aug. 9.....	$800
Check on Riggs & Co.,	Sept. 15, '84.....	400
" " " " "	Sept. 17, '84.....	250
Cash by me,	Apr. 23, '86.....	350
" " "	July —, '85, on $300 loan....	40
		$1,840

This would leave the balance about where I think it should be or where I have supposed it was, though I do not think it is absolutely correct.

Recurring to the proposition for arbitration submitted in my letter of the 10th inst., to which I have received no reply, I wish only to add the offer was made more in your interest than my own. If not accepted by you I see no way out of our difficulties but through the muddy waters of litigation, into which, except as a last resort, I am loth to enter.

The probable results, direct and indirect, of such a proceeding, as it seems to me, would only differ from the case of the boys who stoned the frogs in this, that while it would be 'death' to you it would not be 'fun' for me.

We disagree in these particulars: 1st. You say our written
159 contract, the terms of which on my part were fully complied with, terminated or expired on the failure of that Congress during the session of which it was made to enact into law the bills referred to in the contract. I deny this proposition. 2d. You say it embraced only the four thousand claims you had registered on your books at that time.

I deny this proposition and say, on the contrary, that it included, not only the four thousand claims referred to, but all you might thereafter obtain; and you expressly covenanted and agreed with me 'to obtain all the claims of that class you could and to contract for fees equal to twenty-five per cent. of all the collections and to subject the whole, together with those in hand, to be shared by me for the consideration therein specified.'

3d. You say the contract was unlawful, invalid, void, and worthless. I answer that this is not so, and if it were so you have no moral or legal right to say it. It would be to plead your own fraud in defense of your obligations, for you came to me with your proposition to do this thing, and from your representations I was made to believe, what I still believe, that this was a perfectly legitimate transaction, and in that faith I entered into that contract with you and kept its covenants on my part.

Now, these three propositions on your part, traversed on mine, contain substantially all there is of difference between us, and their solution depends, each and all of them, upon the terms and construction of the contract itself. They may be decided by any
160 three or five good lawyers of sound judgment and unimpeachable integrity and impartiality, and their finding should be as acceptable to us as though it came from a court.

Any testimony that would be admissible in a suit at law or in

equity may be also offered and passed upon by the arbitration. To avoid objectionable men to either each might make a list of lawyers from which the other should select one or two, and those selected should select the odd man.

It is for you to decide between this course and the other. I can only take 'Hobson's choice.' I wish this question to be determined with as little delay as possible, after due deliberation, and will thank you for an answer this week.

Yours truly, GEO. MASON."

EXHIBIT A. H. No. 13.

"WASHINGTON, D. C., *Sept. 27th*, 1887.

George Mason, Esq., #1020 Vermont Ave., city.

SIR: When you planned to acquire my estate you knew it to be indispensable to success to have it appear that the old writing of 1880 is a subsisting contract between us; that you did not subsequently agree to share the expenses of the prosecution and to take one-fourth of the three-fourths of the fees, and that the old writing of 1880, besides the four thousand claims to which it was in terms limited, covered and included twenty-one thousand other
161 claims discovered, developed, and secured by me between the latter part of 1883 and January 1, 1887, and you knew each one of these alleged facts to be absolutely and wholly false.

You are too cold-blooded and deliberate not to have counted the cost of this enterprise, and in view of the magnitude of the acquisition sought it is fair to presume that you resolved to make the necessary outlay to secure success.

You know that the only means by which you can accomplish the proposed swindle is to get the United States Supreme Court to substitute the false for the true and upon that basis issue the final mandate which shall secure to you the spoils you seek.

The road is a long one and not without difficulties, but if any man can make a success out of such an enterprise you are that man.

HARVEY SPALDING.
M. DE S."

EXHIBIT A. H. No. 14.

"WASHINGTON, D. C., *Oct. 1st*, 1887.

Harvey Spalding, Esq.

SIR: Although your last letter contains one or two material errors, I will first notice the truths. You are perfectly correct in your assumption that I have deliberately and 'in cold blood'
162 counted the cost of every step to the Supreme Court and back again and have taken note of all the difficulties and obstacles on the way, and mindful of the maxim that 'a man who is his own lawyer has a fool for a client,' I have taken advice of counsel. The prospect is not a cheerful one to me, but I am consoled with the reflection that if we travel that long and weary road

together 'the magnitude of the acquisition sought' by me will finally compensate me for the cost. Jacob served and waited for Rachel seven long years, and when defrauded and disappointed of his prize he waited and served yet seven years longer. I, too, have waited, lo, these seven years, and am disappointed but not disheartened. If necessary, I shall imitate Jacob, and, like Jacob, I shall at length win and obtain the prize. I thank you for the encouragement you give me in the last paragraph of your brief epistle.

The difficulties and obstacles which I have taken note of are such as address themselves rather to your prudence and caution than to mine; and if I have not greatly overestimated, some of them you will find insuperable. In the first place, you must not expect with the confidence of absolute certainty that you will be permitted to collect any more of those fees until this controversy is determined, and, if not, it would be inconvenient for you. You must not expect a receiver, if one should be appointed, would collect those fees as successfully as you might be able to do if unmolested. That would be expensive for you. You must not expect that your enemies in the department, in Congress, and elsewhere will
163 fail to notice this struggle and will not use it to your disadvantage. You must not expect that in a struggle like this any fact bearing on the issue will be withheld from the public, before whom you force me to make this fight, from any consideration of tenderness for you. These are some of the considerations to which I have before alluded which are embarrassing to me and which should be appalling to you. 'The prudent man forsaketh the evil and hideth himself, while the fool passeth on and is punished.'

I do not write these things with any expectation or wish to intimidate you. But I do wish that you may sit down and count the cost of your undertaking, as I have done, and deliberately, not passionately, determine whether you can afford to make that long and tiresome journey with me to the Supreme Court, when a briefer, safer, and quite as satisfactory mode of settlement is offered to you.

It is not your estate that I have planned to acquire, but only that portion of it which belongs to me. Whether you or I have taken a false position in this matter is the question to be decided; and your naked assertions or mine, however often repeated or with whatsoever emphasis stated, will weigh but little in the balance. I propose to submit that question to a tribunal selected by yourself within certain limits whose judgment and impartiality shall command respect, and from whose decision or investigation we will neither of us have anything to fear but the direct results. It is only the indirect consequences of litigation that I fear, while
164 both the direct and indirect are menacing you. You have given no answer to this proposition, now twice repeated. I would like an express answer so that the responsibility, if you decline, will rest where the results will be most severely felt.

I will also make a suggestion that we meet with our respective counsel and discuss the issues with a view to some peaceful adjustment of them.

I trust no unnecessary delay will be made in answering these

suggestions, for if we litigate, it is getting late, and we have far to go. That no time be lost, however, I will have my bill for an account and a receiver prepared for service in season for the next rule day.

Yours truly, GEO. MASON."

EXHIBIT A. H. No. 15.

"WASHINGTON, D. C., *Oct.* 1*st*, 1887.

George Mason, Esq., #1020 Vermont Ave., Washington, D. C.

SIR: I have submitted your communication and the old writing of 1880 to my attorney for advisement.

I will notify you on Wednesday or Thursday next as to what action I will take.

HARVEY SPALDING.
M. DE S."

165 EXHIBIT A. H. No. 16.

"WASHINGTON, D. C., *Oct.* 5*th*, 1887.

George Mason, Esq., Washington, D. C.

SIR: I have considered the letter and proposals made by you to myself in letters of late date, ending with that of the 1st inst.

Our respective views of the relations betwixt us growing out of a connection which began in the written agreement of June 3, 1880, are so much opposed that probably no satisfactory settlement of such relations can be reached except in court.

Ordinarily I would consent to the arbitratien which you propose as an alternative, but in the present case it seems to me that a decree in equity will make a better end of the controversy. No reason occurs why a suit after being brought may not be conducted to an early conclusion. As I desire no more than to know what your legal rights are, I will do all that reasonably I may to speed the litigation which you say that you have been advised to commence.

Respectfully yours, HARVEY SPALDING."

166 EXHIBIT A. H. No. 17.

"WASHINGTON, D. C., *Oct.* 20, 1887.

Harvey Spalding, Esq.

SIR: I send by messenger, enclosed herewith, a copy of the bill prepared by my attorneys, Messrs. Cole & Cole.

It will be in time for service in season for the next rule day if filed Saturday morning, and I will with-old it till then.

In the meantime if you have any suggestions to make I shall be pleased to receive them. I still think it would be better that this matter be adjusted out of court, but I have no choice and you seem to have decided otherwise.

Yours truly, GEO. MASON."

EXHIBIT A. H. No. 18.

"WASHINGTON, D. C., *Oct. 20th*, 1887.

George Mason, Esq., #1020 Vermont Ave., city.

SIR: I have received your favor of the 20th inst. with draft of the bill by which you propose to effect a settlement of the business you have lately discussed in several communications.

My attorney, who is particularly interested in the case, is absent in North Carolina. Before he left he suggested that we
167 would be able to enter an appearance and make answer to whatever bill you might present within the time allowed by the rules of the court.

I have not read the paper, and shall turn it over to him for examination immediately on his return, and I will leave it to him to make to you any suggestions he may deem proper.

It is my desire, however, that the facts with which you are perfectly familiar shall be made matter of record in the court as early as practicable.

Respectfully, HARVEY SPALDING.
M. DE S."

Adjourned to—

FEBRUARY 20, 1888, MONDAY—10 o'clock a. m.

Met pursuant to adjournment.

Present: W. L. Cole, Esq., of solicitors for complainant, who is present; also the examiner and S. F. Phillips, Esq., solicitor for the defendant.

HARVEY SPALDING, who further deposes and says, being recalled for further cross-examination:

By Mr. COLE:

Q. Do you know Horace S. Cummings?

A. I know him.

168 Q. Did you have a conversation with him in relation to Mr. Mason's interest in these claims, some time after the first appropriation was made, on New York avenue near 15th street or on 15th street near New York avenue?

A. I never had any conversation with him except to answer a question that he put to me about Mr. Mason.

Mr. PHILLIPS: What time do you put that at?

Mr. COLE: Some time after the first appropriation was made for the payment of the claims.

Q. Did you state to him in that conversation what Mr. Mason's interest in the business was?

A. I stated to Mr. Cummings that Mr. Mason had failed to comply with his contract.

Q. Did you state to him what Mr. Mason's interest in the business was?

A. I cannot state whether there was any conversation in particular about the original written agreement, but the particular thing I remember was that I stated to him that Mr. Mason had failed to comply with his agreement.

Q. Did you or did you not in such conversation with Mr. Cummings state to him about what sum of money you considered Mr. Mason was entitled to under his contract with you?

A. I did not. I stated that I intended to pay Mr. Mason, if I succeeded in collecting the claims, $10,000.

Q. Did you not state to Mr. Cummings in that conversation, in response to a question or remark made by him that Mr.
169 Mason would make a pretty good thing out of it, that he would, but would not make so much as he expected; that he might get $25,000 or $30,000?

A. I never made such a statement to Mr. Cummings. He stated to me that $10,000 was a nice sum for Mr. Mason to get.

Q. Did you not in effect state to him that Mr. Mason's interest in these claims would amount to $25,000 or $30,000?

A. I never made that statement.

Mr. PHILLIPS: I object to the counsel asking the witness what he did say in effect to Mr. Cummings.

Mr. COLE: I have stated the specific language used as nearly as I could.

Q. Did you not state to Mr. Cummings that Mr. Mason would get out of the business $25,000 or $30,000 over and above what he had put into it?

A. I never made such a statement to Mr. Cummings or to anybody else.

HARVEY SPALDING.

Sworn to and subscribed before me this 20th day of February, A. D. 1888.

ALBERT HARPER, *Examiner.*

170 JAMES H. SPALDING, being produced as a witness of lawful age for and on behalf of the defendant and being first duly sworn, deposes and says:

Direct examination.

By Mr. PHILLIPS:

Q. You are a son of the defendant?

A. Yes, sir.

Q. What is your age?

A. Twenty-five years of age.

Q. How are you employed at the present time?

A. I am employed by my father in the prosecution and collection of the claims of the postmasters for readjustment.

Q. In his office?

A. Yes, sir.

Q. You are a clerk in your father's office?

A. Yes, sir.

Q. How long have you been so employed?

A. I worked for a short time in the spring of 1880, but I did not commence regularly until the spring of 1882. Since then I have been employed constantly here.

Q. What time in the spring of 1880 did you commence?

A. In June I commenced—some time in the early part of June—and worked along until the fall.

Q. What did you do then?

A. At that time I finished the registration in the book of these claims which had been commenced by Mrs. Blincoe.

171 Q. You have that book before you?

A. Yes.

Q. State where your work began.

A. I commenced and finished the book from No. 4823, on page 175 of this book, though I had previously inserted a few names at odd times.

Q. And running on to what number—how many altogether?

A. I ended with No. 7520, in page 274. I think all of the numbers between that time are inserted by myself.

Q. By what time had you finished that registration?

A. Well, I am not positive about that. I commenced in June and I finished within six weeks certainly and probably within a month. That I am not positive about.

Q. How did you procure the names which you inserted?

A. The names inserted were from slips prepared in the office.

Q. Were those slips bound together or detached?

A. They were separate slips, but generally in bundles separated by States.

Q. When you speak of slips how many names did a slip contain?

A. One name—that is, the name of the post office, the name of the State and county, and the name of the claimant and the amount, and I believe there were check-marks representing the cases that had been in the Court of Claims.

Q. Were you present at your father's examination in this case on Friday and Saturday?

172 A. Yes, sir.

Q. Is that the same book to which he referred in making his statement about the 7,520 cases?

A. Yes, sir; that is the same book.

Mr. PHILLIPS: I wish the examiner to mark that book for identification in some way.

EXAMINER: It is marked by me "For identification, Exhibit J. H. S. No. 1."

Q. What became of the slips from which those names were taken?

A. No particular pains were taken to preserve them. Part of them, I believe, were destroyed and the rest of them were around

the office for awhile. No attention was paid to them when we were through with them.

Q. What did you do after you returned to your father's office?

A. I commenced to get in the claims principally, and then I do not know whether I made an index of some of the claims or not; I forget. An index was prepared, though, but I can tell whether I did any of that work by looking at the book.

Q. Do you recollect the fact that the Postmaster General made a decision in this matter which affected the office in some way or affected the business of the office, and how?

A. I do not know exactly which decision you refer to. The one made by Postmaster General Gresham a short time after the passage of the act I remember very well.

173 Q. What effect did that have on the business of the office?

A. Why, immediately after we understood his decision we commenced making registers—that is, we commenced making lists of other claims.

Q. About what time was that?

A. Well, I believe, May or June, 1883.

Q. Do you know the theory upon which the original list in that book of 7,520 names was made up, and that upon which you commenced to make up the lists, as you say, in May or June, 1883; and, if so, can you state?

A. I know the mode of making up the lists perfectly. The mode was somewhat the same in making up these lists. We made our estimates as nearly as possible of the exact amount of commissions for each biennial period and took from that the actual amount of salary received, and that gave us——

Q. (Interrupting.) During the same period?

A. During the same period, and that gave us our estimate of the amount due.

Q. That was in what book, or in what case was that?

A. That was in the cases in the old book which has just been exhibited and marked for identification.

Q. Then how was it after May or June, 1883?

A. In those cases that were made up immediately after May, about May, the mode was a good deal in the same way.

Q. Made when?

A. Made in May or June, 1883. The mode was a good deal in the same way. It only took the claims prior to July 1, 1866,

174 and after July 1, 1872.

Q. What was the theory there?

A. The theory is the same as in these old cases in the book which has just been exhibited. Later on in July, 1883, we commenced getting in or making lists of claims under an entirely different mode, which was exactly the reverse of this.

Q. What was the Postmaster General's decision that you refer to? What did he decide?

A. He decided that instead of giving a man the difference between the commissions and the salary for the same period he would give him the difference of the commissions of the prior two

years and the later salary; that is, if a man asked for readjustment between July, 1870, and July, 1872, he would give him the difference between the commissions of the period between July 1, 1868, and July, 1870, and the salary between July 1, 1870, and July 1, 1872.

Q. And that estimate of his operated for what two years?

WITNESS: In this particular case?

Mr. PHILLIPS: Yes; in that particular case.

A. In what particular case, between 1870 and 1872. In other words, he based the compensation of 1870 and 1872 on the business of 1868 and 1870.

Q. After he had made that decision you say that you began to get other claims?

A. Yes, sir; without authority from Mr. Harvey Spalding, I commenced making lists in few of the States, and had them made on a typewriter by this latter mode, and after showing
175 them to him he approved of the same and we had typewritten lists of all the claims coming in under this mode of adjustment.

Q. I understand you to say that after the Postmaster General made his decision in May or June, 1883, you commenced making a list of new names, do you mean?

A. Well, we got a list of new names under the old construction—not under the old construction, but we got a list of names which we thought would be covered by the law, which we had no idea of before. These claims were for giving the men salaries equal to the commissions, but it was not until 1883 that we commenced getting in the claims that have now been allowed under the mode of adjustment under which allowances have recently been made.

Q. Why did you proceed in 1883 to make lists carrying out the old theory instead of the theory that the Postmaster General had just published?

A. We commenced them before we were aware that the Postmaster General was going to change the effect of the law entirely; but before they were completed the change was noticed and we commenced on the other list.

Mr. COLE: Solicitors for complainant object to the entire testimony of this witness upon the ground and for the reason first stated to the testimony of the defendant, and waive cross-examination of this witness.

JAMES H. SPALDING.

Sworn to and subscribed before me this 20th day of Feb., A. D. 1888.

ALBERT HARPER, *Examiner.*

176 LAURA A. BLINCOE, being produced as a witness of lawful age for and on behalf of the defendant and being first duly sworn, deposes and says:

Direct examination.

By Mr. PHILLIPS:

Q. Do you know the complainant and defendant in this case?

A. Yes, sir.

Q. How long have you known Mr. Mason?

A. I have known him since the business arrangement with Mr. Spalding.

Q. For how long a time?

A. Probably seven or eight years. I do not know exactly the time, but I know when I first met him.

Q. How long have you known Mr. Spalding?

A. I have known Mr. Spalding for about nine years.

Q. Where and in what kind of business were you employed during the month of January, 1881?

A. I was in the Corcoran building; in the office of Mr. Harvey Spalding, working for him.

Q. Do you recollect the event of the defeat in Congress of House bill 3981, as it was known?

A. Yes, sir.

Q. At or about what time was it?

A. It was on the 17th of January, 1881.

Q. Did you upon that occasion see the complainant and defendant together?

177 A. Yes, sir.

Q. About what time in the day?

A. I think it must have been some time in the afternoon, between two, I suppose, and half past two or three o'clock; something like that. I do not know exactly the time, but it must have been about three o'clock.

Q. Where did you see them?

A. In Mr. Harvey Spalding's office, room 64.

Q. In this building—the Corcoran building?

A. Yes, sir; just across the hall from here.

Q. Will you state the circumstances under which you saw them together?

WITNESS: Do you mean how it was?

Mr. PHILLIPS: Yes.

A. I was in the office and had been in there, of course, all day, and Mr. Spalding had been to the Capitol. He had gone up there in regard to this bill, and he came home afterwards – came in the office and took off his hat and coat. He looked terribly blue. He sat down, and then Mr. Mason came in.

Q. Now, you can state anything that occurred.

A. Mr. Mason came in and sat down and made some remark to Mr. Spalding, and then he remarked to me, "I suppose Mr. Spalding has told you of the defeat of the bill and the close vote, and that

the Speaker had to send his page across the hall to get some
178 of the members to change their votes, and then it was so close that the Speaker himself got down and voted." Well, he said it was a remarkable thing that Mr. Spalding had accomplished a great deal in having to fight not only the department, but the Speaker of the House and almost the whole Congress, and that still he did not think it would be necessary to give up the fight if by proper working, sending out these statements to the people, and get their members interested in this thing and work hard to get it through. Mr. Spalding said that he could not do anything, but that he had gotten to his rope's end; that he had no money to do anything. Then Mr. Mason told Mr. Spalding his motto was try and try again. Mr. Spalding said, "Good God, I can do no more. I have done all a man can do." Mr. Mason then told Mr. Spalding, "If you will go on with this I will stand by you, and I will furnish the money for the expenses of the business; and then he suggested how he thought would be the way to do it—to send out the proceedings and have them published, not only a few, but thousands of these circulars, to all these people and get them interested and fully aroused. They talked the matter over then and decided about it. Mr. Spalding then said that he could do the work, but he could not furnish any money.

Q. Did the conversation close there?

A. No. They talked for some time. I was interested in them and wanted to know what was going to be done. Mr. Mason suggested that they print all these proceedings and send out these
179 circulars to all the people and keep it up, so that by the next Congress they could have all the Congressmen fully understand this thing.

Q. They talked about how long?

A. I do not know how long.

Q. Have you any idea how they were situated to each other, how near to each other, and how you were situated?

A. We were sitting in kind of a triangular shape to each other. Mr. Spalding was sitting there (illustrating) and Mr. Mason was sitting there (illustrating) and I was sitting here (illustrating).

Q. Do you know how far apart you were?

A. I suppose, four or five feet. I am not a good judge of distances.

Q. You heard the conversation very plainly?

A. Yes; because I was very much interested.

Q. How have you been employed since then?

A. With Mr. Spalding; that is, when I am able to work at all.

Q. Are you regularly at his office now?

A. No; I am not able to go out every day, but I am always ready to go when he needs me and sends for me. I am not in the office every day. I have some kind of trouble with my heart which keeps me some times from going out at all.

Q. Do you recollect that book marked for identification "Exhibit J. H. S. No. 1?"

A. Yes, sir.

Q. Did you do any work in that book?

180 A. I did the registering of claims in it.

Q. Will you please open the book and say how far you registered them?

A. I registered down to No. 4822.

Q. Where did you get those claims?

A. From little slips that Mr. Spalding had prepared for me to transfer in the book so as to make it easier for me to do. That was my business in the office.

Q. Do you recollect by what time you had finished the registration of the 4822 claims?

A. No; I do not know, for I was homesick, and then I would come back and work and then I would not be able to come out again for a few weeks.

Q. Well, about what time did you finish it?

A. I do not remember the date. Mr. Spalding's son, James, did some of it afterwards. If I thought I would not be able to come back he would say that he would finish it, and that I had better not come. I do not remember the date that I finished because I had my sick spells so frequently that it did not make an impression upon me as to the time I finished; but I was the first one that did any writing in the book, and I began it in the office.

Q. About what time did you first see that book, about what time?

A. I do not know; soon after we came to the Corcoran building, the first of March, 1880, and this book was brought in immediately after that.

181 Q. Was there any writing in it then?

A. None at all. I did the first writing in it.

Q. It was on the first of March, 1880, that you first saw that book?

A. Just about that time, probably, but not exactly that date.

Mr. COLE: Solicitors for complainant object to the questions and answers in relation to the book and what it contains upon the same ground as heretofore, and, without waiving such objection, proceed to the cross-examination.

By Mr. COLE:

Q. How long had you been in the employ of Mr. Spalding on the 17th of January, 1881?

A. I went to Mr. Spalding about the middle of February, 1880; I think it was about the middle of February, 1880—somewhere along about that time—but I do not remember the exact date.

Q. You were a clerk in his office?

A. Yes, sir.

Q. Did you occupy the same office room with him?

A. No; when I first went as a clerk to him he was on the corner of 15th and New York avenue, is it not, Mr. Spalding?

Mr. PHILLIPS: Do not ask him.

WITNESS: Well, it was in the Safe Deposit building.

182 Q. I meant to ask you whether you and he occupied the same office room together.

A. Yes, sir; I have always been in his office and no other.

Q. That is, in the same office room?

A. Yes, sir; as there was but the one room at that time.

Q. Had you at that time any interest in the prosecution of these claims other than as a clerk for Mr. Spalding?

A. In what claims?

Q. In the postmasters' claims.

A. There were two sets of claims.

Q. I did not know that there were two sets of claims.

A. Yes, sir; the original claims, in which I did have an interest or supposed I should have if the bill was passed and the claims were paid, but in the others, those which Mr. Spalding called the "scheme claims," I had no interest except the interest of being paid to work.

Q. Did you have an interest in the claims on the 17th of January, 1881?

A. I supposed that I had.

Q. And you have the same interest now?

A. In those same claims, I have—not in what Mr. Spalding calls the "scheme claims," except my salary as a clerk.

Q. You are interested in the continuation of the prosecution of the original claims?

A. Of the original bill, I am—that is, what we call the original claims.

Q. Did you understand on the 17th of January, 1881, that
183 there were two classes of claims?

A. There were not two classes of claims then. It was only that construction of the law by the Postmaster General which made two classes of claims.

Q. First, I asked you if you were not interested in the continued prosecution of the claims?

A. I told you that I had an interest in the original claims, but in what Mr. Spalding calls the "scheme claims" I have no interest save the money he pays me to work.

Q. You do not understand my question. I will simply repeat it in order that you can understand it. I want to know if you were interested, on the 17th of January, 1881, in having the prosecution of those claims continued?

A. I do not understand what you mean.

Q. Were you willing that Mr. Spalding should abandon the prosecution of these claims on the 17th of January, 1881?

A. No; I was in hopes that he could keep them up.

Q. It was to your interest that he should keep them up?

A. Yes; I did not understand it.

Q. Had Mr. Spalding told you, before Mr. Mason came in, about the defeat of the bill?

A. Yes, sir; he had.

Q. About how long had he been in the office before Mr. Mason came in?

A. Only a few minutes; I cannot state the exact time.

Q. Did Mr. Mason and Mr. Spalding discuss the defeat of the

bill before Mr. Mason addressed the remark to you that he
184 did, as you say.

A. No; all he said to Mr. Spalding was, "Well, it was a pretty close fight;" and then he said to me, "Did Mr. Spalding tell you about this?" and then followed what I have just related.

Q. The only remark he addressed to Mr. Spalding was to say that "it was a pretty close fight"?

A. He asked me if Mr. Spalding had told me he tried to cut his hand off, and I said, no; he did not; that he did not tell me that, and then it was that they discussed it, and he said what a close fight it was, and then he said to Mr. Spalding, "You have done all that a man could do, but do not give up; my motto is, 'Try, try again.'"

Q. Did Mr. Mason and Mr. Spalding discuss the method that should thereafter be pursued?

A. Yes, sir.

Q. Did they do that before they discussed the question of the expenses of it?

A. No, sir; Mr. Spalding said that he could not do anything, for he had no means, and that he was at the end of his rope, and that it would take a good deal of money. That is all that was said about that.

Q. Was anything said between them about renewing the efforts to get the bill through during the then session of Congress?

A. No; it was to be at the next session of Congress.

Q. They did not discuss the feasibility of getting the
185 bill through that Congress at that time?

A. I will not say about that. My particular remembrance is that the thing was to go on; whether at that Congress or not I do not remember.

Q. If they had discussed the renewing of efforts during that session would you not likely remember it?

A. Well, they were to begin right away, just as soon as they could send out these circulars to get the people aroused, so that their Congressmen would understand the case thoroughly by the beginning of the next winter.

Q. But the 17th of January, 1881, was just about the beginning of the winter?

A. Yes.

Q. And that session would have lasted long into the summer, would it not?

A. I do not remember about that. It made no impression upon my mind. I only remember those things which made some special impression on my mind. I do not know whether that was a long session or a short session of Congress.

Q. You are not prepared to say that they discussed the renewing of efforts to get the bill through that session?

A. They were to go to work immediately and do all they could to get it through if possible by sending out these circulars.

Q. Was not their method of promoting the legislation discussed except as to the sending out of circulars?

A. Well, to write constantly to these people and see the mem-

bers of Congress and do all, of course, that was necessary.
186 Mr. Spalding was to do all that was necessary in the way of work.

Q. What did they say the expenses would be?

A. They did not say. Mr. Spalding said that it would take a great deal of money and a great deal of work; that he could do the work, but that he had no money. Mr. Mason then said, "Go on and I will stand by you and furnish all the money necessary."

Q. What money would it take if Mr. Spalding did the work, any more than postage?

A. Of course, it would take money for the necessary printing of the circulars and hire of the clerks, expenses of the office, and everything of the kind, and Mr. Spalding had no money for that.

Q. Was not that the work Mr. Spalding referred to that he could do?

A. No; Mr. Spalding would do the labor of writing the circulars and get them ready to be printed.

Q. Is that what he said?

A. I do not know that he used that language, but that was my understanding.

Q. That was your understanding?

A. Yes; of course he could not do all the office work. It was for the expenses necessary to bring these claims before Congress in the right way, and Mr. Spalding said that it would take a great deal of money, and that he was at the end of his rope and had no means himself.

Q. Mr. Spalding was very much discouraged?

187 A. Yes; I felt very sorry for him.

Q. He had been at work at those claims a good many years?

A. Yes, for several years before I came with him. I only know from the time I came in.

Q. And the bill came very near passing, as you have stated?

A. Yes; within only a few votes; and Mr. Mason said that the Speaker sent his page around to get some of the Congressmen to change their votes; and Mr. Mason was laughing at me because Mr. Spalding and Mr. Mason belonged to one political party and I to another, and laughed at what my political friends had done.

Q. Did you feel as much discouraged as Mr. Spalding did?

A. I could not say that I did, because I had not so much at stake as Mr. Spalding had and had not gone through what he had, but I felt discouraged and disheartened and all that.

Q. Did it seem to you that the defeat was much of a Waterloo?

A. Yes; I knew that unless some means were furnished Mr. Spalding to go on, the whole thing was gone. I knew that he had not the money, and that is why I was very much interested and remember the conversation. I remember that afterwards I said to Mr. Spalding that I could now understand how the people appreciated the Savior so, as Mr. Mason had come in and been a Savior to us.

Q. What did he say to Mr. Spalding about furnishing money?

A. He said to Mr. Spalding, "You must not be discouraged;

try, try again; that is my motto;" and Mr. Spalding said,
188 "My God, how can I, for I have no money and am at the end of my rope; but I can work." Mr. Mason said, "Go on and I will stand by you and furnish you all the money necessary to run the business—the prosecution of the claims."

Q. Have you now given us all the exact language used by Mr. Mason?

A. As near as anybody can remember anything. I was very much interested, and that is the reason it made such an impression upon me, and under the circumstances of Mr. Spalding coming in discouraged and Mr. Mason coming in as he did and saying what he did.

Q. You are quite sure of that?

A. That part I am just as certain of as I could be of anything, when he said, "I will stand by you and furnish the money." As I was interested, I remember that distinctly.

Q. You are sure that is the language Mr. Mason used?

A. Yes, sir.

Q. How long did that conversation continue?

A. I do not know. After that they talked about the means—how it should be done—and we sat there until it was very near dark when I got home. I remember that when going home the cars were blocked. It was in winter.

Q. The days were short?

A. Yes, sir.

Q. Was anything said at that interview about printing bills?

A. Yes, sir; Mr. Spalding said that it would require a
189 great many circulars, and Mr. Mason said yes. Mr. Spalding said that there were 7,500 of these claims, and that he could get 4,000 of these claims by working hard; and Mr. Spalding then spoke about sending circulars, and Mr. Mason said not only send them once, but many times, and have them printed ten thousand at a time.

Q. Did either of them mention how much the printing bill would be?

A. They did not. I do not suppose they made any calculation about that. No sum was stated.

LAURA A. BLINCOE.

Sworn to and subscribed before me this 20th day of February, A. D. 1888.

ALBERT HARPER, *Examiner.*

Adjourned to—

FEBRUARY 23, 1888, THURSDAY—2 o'clock p. m.

Met pursuant to adjournment:

Present: W. L. Cole, Esq., of solicitors for complainant; also the examiner and S. F. Phillips, Esq., solicitor for the defendant, HARVEY SPALDING, who further deposes and says:

After the question was asked me whether I did not request that

the limitation of $25,000 be put into the contract, in regard
190 to Mr. Mason's share in the fees, I became satisfied that my answer was an error and that such a request was made and declined.

HARVEY SPALDING.

Sworn to and subscribed before me this 23rd day of February, A. D. 1888.

ALBERT HARPER, *Examiner.*

Whereupon JAMES H. SPALDING further deposes and says:

Upon reading over my deposition taken last Monday, in order to make clear an answer made by me in reply to a question put to me, I would state that all the claims in the old book which has been made an exhibit to my deposition were of late postmasters claiming between 1866 and 1872.

Immediately after the passage of the act of March 3, 1883, Mr. Gresham, the then Postmaster General, having intimated that the act of March 3, 1883, and June 12, 1866, applied to the period between July 1, 1864, and July 1, 1874, we commenced making registers of claims arising between 1864 and 1866, and 1872 and 1874.

Later on, in June or July, the Postmaster General having officially made a decision that readjustments were to be made under an entirely different mode of adjustment, we commenced getting
191 in claims under an entirely different basis, and we proceeded to get in claims under this basis, as well as the claims registered in the book heretofore mentioned, for some time.

After the passage of the act of 1886, which seemed to fix the mode of readjustment in accordance with this later decision of Mr. Gresham, we commenced almost exclusively then to get in the claims under this latter mode, and we put on a large force and used extra efforts, and we got in a large number of claims between that time and January 1, 1887, from which date claims could not be presented.

Mr. COLE: Solicitors for the complainant make the same objection to this statement of Mr. Spalding as was made to his other testimony, and further cross-examination is waived.

JAMES H. SPALDING.

Sworn to and subscribed before me this 23rd day of February, A. D. 1888.

ALBERT HARPER, *Examiner.*

Mr. PHILLIPS: Solicitor for the defendant here announces the testimony in his behalf closed.

ALBERT HARPER, *Examiner.*

192 I certify that the foregoing depositions (comprising 126 printed pages) *was* taken down by me in short-hand as an examiner in chancery from the statements when and as uttered by the deponents thereof; that the same were thereafter transcribed and

reduced by me into print, and thereupon read and subscribed by the respective deponents thereof.

I further certify that my fee of $94.50 for taking, certifying, and returning said depositions has been paid to me by the defendant.

I further certify that I am not of counsel nor in anywise interested in this cause.

ALBERT HARPER,
Examiner in Chancery.

193 FEBRUARY 23, 1888, THURSDAY—2.30 o'clock p. m.

Met pursuant to agreement.

Present: S. F. Phillips, Esq., solicitor for defendant; also the examiner and W. L. Cole, Esq., of solicitors for the complainant.

GEORGE MASON, who being produced as a witness of lawful age for and on behalf of himself (in rebuttal) and being first duly sworn, deposes and says:

Direct examination.

By Mr. COLE:

Q. You may state the time and place and circumstances under which the contract between you and the defendant was executed.

A. About the first of June, 1880, I met Mr. Spalding at the corner of 15th street and New York avenue, and we rode home together on the street car. I lived at No. 38 I street northwest, and he, I think, at No. 18 I street northeast. My recollection is that no one else was in the car, or but few. He asked me how I would like to take an interest in his business or to purchase an interest in his business. As I was entirely ignorant of what the business was, I asked him some questions about it and was interested in the matter and thought favorably of the proposition he made me, but I said to him that I had not the ready money to pay what he required, although
194 I had some money due me that would be coming in soon. In reply he said that the payments could be made in installments so as to accommodate my circumstances.

I finally said that I would give the matter consideration, but as I was unfamiliar with the business I was unable to retain in mind what he had said to me. I asked him to make his statements with his proposition in writing. This he did and handed to me that evening or the next morning, and that writing is the one marked "Exhibit A. H. No. 1."

The next evening he called at my house and we discussed the probabilities of legislation. I said to him that I was aware of the difficulty of obtaining legislation in favor of claimants, but that this was an exceptional case; that these claimants were large in number and men of influence in their respective localities, and that I thought their assistance would be very great in obtaining the necessary legislation, and that with these views I had determined to accept his proposition.

It was then arranged that I should prepare the contract, which I

did in duplicate, and the next evening he called to execute it. After reading over the paper, he asked me how I would like to have my interest limited to $25,000, to be paid out of the first income or proceeds from the business, saying that he foresaw that the business would have a long tail to it, or something to that effect. I replied that in putting the money into the business which I was about to put I took a great risk; that if I lost I would not cry over spilt milk, but that if we won, as I believed we would from his
195 representations, I wanted to have my interest enough, so that I might afterwards feel independent. We then executed the contract. I do not remember a single representation made to me by Mr. Spalding concerning the business prior to the signing of that contract which was not embodied in his written statement before referred to.

Mr. PHILLIPS: I object to the competency of any statement made by Mr. Mason as to the negotiations prior to the ascertainment of the contract in writing.

WITNESS (resuming): After signing the contract I went to his office, and he explained to me many details of the business. He explained how he obtained the names of claimants and the necessary data in regard to the claims. He showed me the book in which he had registered some of the claims. He explained to me that that book only contained claims of larger amounts; that the minimum of the claims on that book was twenty-five dollars, and he suggested that it would pay to include in the list claims as low as five dollars or even three dollars, and that suggestion was acquiesced in.

I do not think that he explained to me the difference between the pending bills until some months later—perhaps after the 17th of January, 1881, the time when the House bill had failed. Talk was then had about pressing the Senate bill for legislation at that Congress, and I think then the difference between the two bills was discussed, and it was decided that the Senate bill would be better than nothing.

196 Q. Have you stated all you care to in response to that question?

A. Yes; I think so.

Q. Have you any recollection about the occurrences of the day on which the House bill, then pending, was defeated, said to be January 17, 1881? And, if so, state what occurred on that day as you remember it.

A. I remember distinctly the occurrences that took place at the House of Representatives, the discussion and the vote on the bill. I remember being present with Mr. Spalding in the gallery. I remember that Mr. Spalding was somewhat nervous and in playing with his knife he cut his finger. I do not remember the alleged occurrences at his office, though I presume I may have been there that afternoon late, as my office was on G street between 14th and 15th, very near, and I may have called there to return with him to our respective homes. I do remember calling at his house that

evening and talking about the occurrences of the day. I remember some things that were said. I remember telling him a little anecdote illustrating the situation somewhat. I certainly did not make any agreement with Mr. Spalding on that day relating to this business. I may have suggested to him, if he raised the question about his policy to go on with the business, that I thought there would be no difficulty in raising the necessary amount of money. I may have said to him that I would do what I could, but I certainly did not commit myself any further than that, and I do not know
197 that I said even that. My circumstances were not such that I could have undertaken or would have undertaken anything such as has been testified to. At that time I had not paid Mr. Spalding all I owed him. I was in debt to him over $500, which I paid him between that date and the 21st of February, 1881, when he acknowledged on my contract that he had received his pay in full under that contract. The last payment, however, on the 21st of February, 1881, was by note which was paid some two or three months later, and that note is embraced in the vouchers or the check I gave in payment of that note is embraced in the vouchers mentioned in the bill of complaint. Of course, that was an error, as I found the check; I did not recall the explanation of it at that time; I afterwards discovered it.

Q. Did you or not at that time or at any time agree, as Mr. Spalding has alleged in his answer, to share with him the expenses of the prosecution of these claims?

A. I did not.

Q. Or to pay any share of them?

A. I did not. The first money that he asked me for, after I had paid in full the amount I had agreed to pay under the contract, was by way of a loan for a day or so, and I gave him a check, I think on the 7th of March, 1881, for $15. It was to have been paid, my recollection is, the Saturday following. Those were the days when I had money to pay out and needed it. The day on which it was to have been repaid to me he sent me the note, which is now in evi-
198 dence with Mr. Spalding's deposition, marked "Exhibit A. H. No. 2." Other sums of money that I let him have afterwards were loaned to him in the same way. I did not keep an account of them. I did not call on him for repayment.

Q. Did he render to you any statement of the expenses of the business or tell you what the expense was?

A. He never did except incidentally; never any definite. No; he never told me what the expenses were, to my recollection. He may have mentioned items of expense occasionally, this item or that item.

Q. In what business were you engaged in the summer of 1881?

A. In the fall of 1880 I commenced the erection of quite a number of houses at the northwest corner of R and 15th streets, and was engaged throughout the year 1881 and up in the spring of 1882 in the enterprise. I had not the means of my own to carry on that business and, indeed, but very little means of my own, and was using large sums of borrowed money. While that enterprise

was pending I did not feel at liberty to divert any of those funds from the purpose to which they had been appropriated nor would I undertake anything which might embarrass that enterprise.

Mr. PHILLIPS: I object generally to all these explanations by Mr. Mason of what he was doing and what his reasons were for his alleged declining to enter into a contract of paying one-half of the expenses of the prosecution of the claims.

Q. When did the House bill pass—the bill which was en-
199 acted into the law of March 3, 1883?

A. The bill passed the House, according to my information, on the 3rd of April, 1882. It had previously passed the Senate twice, and from that time forward we regarded the enterprise as assured of success.

Q. Was that the same bill that had passed the Senate?

A. No, sir. It was substantially the bill that had been defeated in the previous Congress, No. 3981, with our provisoes and perhaps one or two verbal corrections. It was House bill No. 5206, if I remember, of that Congress, and the bill which finally became a law. It lingered along, however, until the closing hours of that Congress and finally passed on the 3rd of March, 1883.

Q. After the bill had passed the House, state what, if any, applications were made to you by Mr. Spalding for money.

A. After the bill passed the House Mr. Spalding said to me that he thought he could use a large sum of money very profitably in the business and named the sum of $10,000 which he requested me to raise for him, suggesting that I might be able to do it here or in Massachusetts. About July of that year I went North and after, perhaps, a week or ten days reached Massachusetts, where I remained some weeks. My impression is that I received a communication from him on the way or in Massachusetts urging the proposition that he had made.

Mr. PHILLIPS: Where is that communication?

200 WITNESS: I have not it. I say that my impression is that I did receive a communication.

Mr. PHILLIPS: It was written?

WITNESS: It was written, of course, if I received it.

Mr. PHILLIPS: Then I object to the witness stating the contents of it.

Q. What became of that letter?

A. I do not recollect about that.

Q. Have you been able to find it?

A. I have not. Later, I think, in reply to my answer I received a very ungentlemanly letter from Mr. Spalding. It was even insulting and menacing.

Mr. PHILLIPS: Where is that letter?

WITNESS: I will tell you soon.

Mr. PHILLIPS: I want to know now.

WITNESS: I was away from home when I received that letter and I very charitably tore it into very fine pieces and scattered it to the winds and never answered it.

Mr. PHILLIPS: Then I object to any statement of the contents of a paper destroyed by Mr. Mason.

WITNESS: Mr. Spalding testified to sending no such communication, and I was simply corroborating his testimony.

201 Q. State whether you afterwards had any conversation with Mr. Spalding about that occurrence; and, if so, when and where and what took place.

A. I do not recollect that I did. On my return, which was about the fore part of September, 1882, Mr. Spalding called at my house and renewed the question of raising money. I do not remember distinctly what was stated on that subject, but I know this: that I gave him to understand that he need not expect from me anything further in that direction. He then asked me if I would sell my interest in the business, saying that my having an interest was an embarrassment to him in obtaining money from other sources. I replied that I did not wish to embarrass him in any way and would sell my interest in the business; that I would entertain an offer, to be made in the shape of a cash payment and another sum contingent on the final success of the business. To my surprise he made me the offer of $10,000, to be contingent on the final success of the business and to be paid out of the business if finally successful. I reminded him then that at the time of signing the contract he had asked that my interest be limited to $25,000, to be paid on the same contigency, and that he ought not to expect, in view of the then existing circumstances, that I would take a sum much less. At that point he became very much excited, and I do not remember what was said afterwards. I do not think I said anything. He very soon left. I excused his conduct, in my own mind, from the fact that he had been under a heavy strain in regard to his

202 business for a long time.

Q. And you thereafter let him have any more money to use in the prosecution of said business?

A. I did.

Q. When and how much?

A. In the shape of loans. If you will give me that correspondence I will tell you exactly how much. (Correspondence handed to and examined by witness.) On November 21, 1883, I loaned him $250 and took his note; on December 15, 1883, I loaned him $250 more and took his note; on March 24, 1884, I loaned him $100 and took his note; on October 31, 1884, I loaned him $100 and took his note, and on April 7, 1884, I loaned him $100 and took his note. That was all the money I loaned him until receipts began to come from the business.

Q. Did he ever recur to the conversation that took place between you and him at your house in September after that?

A. He did once only, and not as he has stated in his evidence. At the time when the Brewster opinion was under discussion with the syllabus published by Postmaster General Gresham of that opinion he seemed to be riled at something I said, and he said to me—he made the remark—"You had better had accepted what I offered you, $10,000." I made no answer, and in a moment he

added, "It is all you will get," and I was incapable of answering that. That was all that was said in that connection at that interview.

Q. In his answer to the bill in this cause Mr. Spalding has
203 alleged that all the sums of money which he has paid you on account of this business was paid upon the basis of what he says took place between you and him at your house in September, 1882; is that so or not?

A. I am unable to say what was in Mr. Spalding's mind. He never intimated to me until after August 9th, 1887, that he had paid me money on any such basis, nor make any suggestion or reference whatever that led me to suppose that he did not recognize my claim to one-quarter of each and every fee in each and every case, as had been provided in our contract of June, 1880. He excused himself from making payments to me on the ground of his great necessities from one year to another, saying that if I would allow him to take what came of those appropriations, excepting the few sums he gave me, I should be provided for in the next. This went on until 1887, when I thought that if he could not pay me money he could at least make an accounting or render an account, and I called on him on the 9th of August, 1887, for such an account.

Q. After you had entered into the contract with Mr. Spalding, state what took place between you and him as to the number of claims which he was receiving from time to time—what information he gave you in relation thereto.

A. He always told me whenever I asked him how many claims or about how many claims he had received up to the date of my inquiry, making no distinction in regard to the claims which he had in hand at the time of our negotiation and the claims that he afterwards received, except he sometimes referred to these other
204 claims as "scheme cases." When payments were coming in he always told me whenever I asked him how much money he had received by way of fees from each of the several appropriations, making no distinction between the cases which were first in hand and those which he afterwards obtained.

Q. When did you first know of such distinctions being made by him?

A. Well, so far, the only distinction that had been made—as I say, he spoke of those cases in 1883 and 1884 as "scheme cases." The first knowledge that I had that he made a discrimination as to my interest was after August 9, 1887, during the correspondence which is in evidence. After the 9th of August, 1887, I never entered his office or had any communication with him whatever, except in writing, until the commencement of the testimony in the case.

Q. Mr. Spalding has said in his examination, referring to the act of June 12, 1866, as follows: "It was discussed on the first of June, 1880, thoroughly examined by the complainant and myself, and all the grounds of the act gone over, and we agreed perfectly and always agreed to that." Please state whether that act was discussed and examined between you and Mr. Spalding prior to the execution of the agreement.

A. My recollection is that all that was said at the first interview on the street car was embodied in the written statement; that at the second interview our talk was entirely in regard to the probabilities of legislation; that I had not and did not then see in
205 either of the laws any question, and knew nothing about them, except what he had told me, and that the first discussion in regard to the construction was in June of 1883, when Gresham's syllabus of the opinion was published. We had then a good deal of talk about the construction, and he asked me to give my opinion about it. I wrote out an opinion, which I handed to him, which differed somewhat from his own views and a good deal from Mr. Gresham's, which he treated with the contempt that it deserved, as worthless.

Q. What representations, if any, did Mr. Spalding make to you at any time (give time and place in your answer) as to the amount of claims that would be payable under his construction of the act as compared with the amount that would be payable under the construction given by the department?

A. He frequently spoke of it after the Brewster opinion was promulgated, and my recollection is that he estimated the amounts that would be payable under that construction as something over a million of dollars, while under his own views of the proper construction of the law the amount would be four or five times that amount.

Q. In your letter of August 15, 1887 (Exhibit A. H. No. 5), in referring to the matter of expenses, you say, in substance, that this would be a subject for equitable consideration in a just and honorable settlement between us; and you also, referring to the matter in a subsequent letter, indicated a willingness to treat with — upon the subject. State whether or not those offers were made as a matter of compromise.

206 A. They were wholly so. I did not acknowledge my obligation and I was under no obligation to pay any part of those expenses; but, on the contrary, I was exempt from them by the terms of our contract; but the long delays that had been made in the business had been the occasion of considerable expense, as I was aware, and I merely wished to express my willingness to do whatever was fair and honorable about that matter, waiving my legal rights if a peaceable settlement could be made.

Cross-examination.

By Mr. PHILLIPS:

Q. Had you read the act of 1866 or the Senate and House bills at the time you entered into the written agreement of June, 1880?

A. I do not think I had.

Q. You did not know what title Mr. Spalding's clients would have to any claim against the Government, then?

A. No; except from his representations.

Q. You took his representation of the title?

A. Yes, sir.

Q. I understood you to say that you did not know the difference

between the Senate and House bill. You knew there was a Senate and House bill?

A. It was alluded to in his statement.

Q. But you did not know the difference between the Senate and House bills until after January, 1881, or until after the failure of the House bill?

207 A. It is my impression that I did not. That matter was not alluded to until long after. I know that I did not until some time after.

Q. Did you know then what the difference was?

A. Well, I think—I believe I comprehended it after it had been explained to me; that it required some more conditions precedent to the filing of claims than the others.

Q. Do you know what effect that would be pecuniarily?

A. Yes. There were more limitations to the claimant. The claimant must have been one who had made application.

Q. What general idea did you have of the effect upon the pecuniary result?

A. Oh, I do not know that I can answer that.

Q. I understood you to say that you wrote an opinion after the Brewster opinion came out?

A. Yes, sir.

Q. You wrote an opinion as to the meaning of the statute as you understood it?

A. Yes, sir.

Q. And that differed somewhat from Mr. Spalding's view?

A. Yes, sir.

Q. Do you recollect how?

A. Well, Mr. Spalding had two or three opinions about that time, and he had a different opinion at a subsequent date. My recollection is now that I said that the act of June 12, 1866, was a remedy provided by Congress for an equitable wrong created by the act of 1864.

208 Q. Do you mean an "equitable wrong"?

A. Well, yes, an equitable wrong; that the act of 1864 in fixing the salaries in advance could not foresee whether these were doing justice or injustice to the claimant, as that would depend upon the business of the office; that in that act Congress had provided a remedy for these wrongs that might grow out of a fixed rule; that they had left that remedy discretionary with the Postmaster General; that he had failed to exercise that discretion; that if he had exercised that discretion as he ought to have done there would have been no occasion for the act of June 12, 1866; that having failed, Congress had evidently intended by the act of June 12, 1866, to make mandatory what they had before left to his discretion, and that was to provide for the readjustment of those salaries whenever this difference of ten per cent. appeared or more between what they were receiving and what they would have had.

Q. Over what period, when that difference appeared, regarding what period?

A. That is pretty hard for me to say. It was a Chinese puzzle.

The question was whether it took place as to that quarter or whether it commenced at the payment of the next quarter or remained for a biennial period or continued for two years.

Q. What was to be the basis?

A. Whether it was to be the difference between the commission on the earnings of the office for that one quarter and
209–212 the salary that had been allowed for that quarter, or whether that would take the quarters expiring during that biennial period or go back two years prior to the preceding quarters.

Q. What was your opinion?

A. I am going to say that I do not remember. It was finally settled by Mr. Spalding, after considerable discussion was had on the Brewster opinion, that what he wanted was the difference between the amounts that were allowed during the biennial period and what they would have received as commissions during the same period, but ignoring the prospective application.

Q. Did you know anything of the McLean case in the United States at the time you entered into this agreement?

A. No; I did not, but he told me of it afterwards.

Q. He did not tell you before?

A. He may have mentioned it in that conversation, but I have no recollection of it if he did.

GEO. MASON.

Sworn to and subscribed before me this 23rd day of February, A. D. 1888.

ALBERT HARPER, *Examiner.*

Mr. COLE: Testimony in rebuttal on behalf of the complainant is here closed.

ALBERT HARPER,
Examiner in Chancery.

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Supreme Court of the District of Columbia, General Term.

GEORGE MASON *vs.* HARVEY SPALDING. } In Equity. No. 10830.

1. Where the language of a written contract leaves it in doubt as to what is its subject-matter, parol evidence may be received to show the circumstances surrounding the parties at the time of contracting for the purpose, not of changing or altering its meaning, but of throwing light upon the language used and ascertaining the true meaning of the contract.
2. Where a decree is partly in favor of complainant and partly in favor of defendant, and the complainant appeals from so much of it as is against him, and the appellate court finds no error in that portion of the decree, it must be affirmed *in toto;* there can be no correction of that which is against the defendant, he not having appealed.

The chief justice and Justices James and Merrick sitting.

Decided January 21, 1889.

Appeal by complainant from a decree in equity construing a contract, on a bill filed for an account.

Mr. W. L. Cole, for complainant.
Mr. S. F. Phillips, for defendant.
The case is sufficiently stated in the opinion.

Mr. Chief Justice BINGHAM delivered the opinion of the court:

The bill seeks relief in relation to a written contract between the parties. So much of that contract as seems important to be considered now reads as follows:

"Harvey Spalding, having for several years been engaged in the prosecution of claims of postmasters and late postmasters for adjustment of their salaries in conformity to section 8 of the act of June 12, 1886, and having a large number of such claims now in hand, to wit, seventeen hundred or thereabouts, and being now engaged in the prosecution of said claims, and in securing for prosecution other similar claims, of which he expects to secure in the

aggregate, including those in hand, about four thousand in number, more or less, upon agreed fees equal to twenty-five per cent. of the amount which shall be collected in each case; and having secured the passage by the Senate of Senate bill 903, this Congress, and the favorable support of House bill No. 3981 by the proper committee of the House of Representatives, which bills propose a basis for the settlement of the claims herein referred to, and the substance of which he expects to be enacted into law, and being in need of funds to conduct his said business to completion, hereby agrees to sell the said George Mason one-fourth of all his interest in said claims now in hand and all that he may hereafter secure, and one-fourth of all his fees therein, free from all charges for expense of prosecuting said claims to collection thereof, for the sum of twenty-five hundred dollars.

"The said interest and share in said claims and fees shall vest in said Mason on payment by him of said purchase-money, and a *pro rata* proportion of said interest and share shall vest in said
214 Mason on payment of each installment of said purchase-money, as hereinafter provided. The said Mason shall pay the said purchase-money to the said Spalding as follows:

"He shall pay the sum of $100 on signing this contract, and a further sum of $100 on or before the 12th of June instant. He shall pay a further sum of $300 on or before the 5th day of July proximo, and a further sum of $750 on or before the 5th day of October next. He shall pay a further sum of $600 on or before the 5th day of November next, and a final payment of $650 on or before the 5th day of December next.

"It is further agreed that a due proportion of all the powers of attorney and contracts for fees to cover the interest of said Mason shall be transferred to him by said Spalding by proper endorsements of substitution of the powers of attorneys and assignments endorsed upon the contracts, and said fees may be collected by the said Mason, and an account thereof shall be kept, and all the fees collected by the said Spalding shall be accounted for and settlements shall be made from time to time as collections are made, and a division thereof shall be made, three-fourths going to said Spalding and one-fourth to said Mason. The said Harvey Spalding agrees and binds himself to obtain all the claims of the class named he can, and to make contracts for fees equal to 25 per cent. of the collections, and to subject the whole to be shared, together with those in hand, by said George Mason for the consideration hereinbefore specified.

"And the said George Mason agrees and binds himself to pay over to the said Harvey Spalding the whole amount of said sum of $2,500, within the time and in the installments as hereinbefore specified, unless he shall elect to pay the whole of said sum within a shorter period than the time named."

So much of the answer as is material for us to consider in reference to the questions presented is as follows:

"It is also true that about June 1st, 1880, this defendant, being in great need of money for expenses in connection with that business, made application therefor to the complainant. As ground of

that application this defendant explained to the complainant his whole business situation and prospects in the above relation. Amongst other things he referred to the probability that one or other of two bills then pending in Congress and bearing upon that business would be enacted, to wit, that Senate bill 903 had already passed the Senate, while House bill 3981 had received a favorable report from the appropriate committee. At the same time the difference in provision by those bills was discussed, and that Senate bill 903, which made provision for fewer postmasters than House bill 3981 did, was at the same time, from its situation on the calendar, more likely to be enacted. And this defendant then stated to the complainant that in the course of the nine years for which he had been engaged in that business he had prepared lists of the names of some 7,500 postmasters who, he was satisfied, would, in part or all, be included in the provisions of such bills, and also that of these about 1,700 had already duly authorized him to prosecute such claims as their attorney, with a stipulated compensation equal to 25 per cent. of what should be recovered, whilst he had good ground to believe that in the end he would be so authorized by some 4,000 of these.

"In the course of the same application it was said and understood between the parties that the classes of postmasters included in the bills and previous legislation would be paid the difference between the amounts of any salary which, during a particular period, they might already have received and the amount of such commissions as, but for legislation in 1864 and after, they would substantially during the same period have received; and it was also then distinctly stated to the complainant by this defendant that it was upon the understanding and theory that the latter had made up the lists aforesaid, as well as had taken the powers of attorney and formed expectations as to the number of clients whom, in the end, he might procure as above stated.

"And this defendant then told the complainant that under the narrower relief of Senate bill 903, which seemed also, as above stated, the more likely of the two to become a law, he estimated that the whole amount of claims that probably he might collect would be worth about $75,000 and his own fees, consequently, about $18,750, whereas, if House bill 3981 were enacted those amounts would be, respectively, about $400,000 and $100,000. * * *

"Further answering, this defendant saith that in administering the act of March 3, 1883, the Postmaster General, in May, 1883, announced a construction thereof and of the act of 1866, referred to therein, which contradicted the construction assumed as above by the parties thereto as a basis of the contract of 1880 and by this defendant in making up the list of 7,500 cases aforesaid. By this construction of the Postmaster General the 10 per cent. increase mentioned in said statute did not mean such increase within any one quarter of the year, and therefore did not authorize an addition to compensation either in such quarter or in the quarter succeeding that, but meant such increase through a biennial term of quarters and that it authorized such additional compensation in any

case only for the succeeding biennial term. In February, 1884, this construction was concurred in by the Attorney General. One effect thereof has been to defeat much the larger part of the 1,700 claims and claimants aforesaid and also much the larger part of the 4,208. Another effect has been to substitute for this class of defeated claims and claimants a much larger number of others entirely different in title and in person, being such, indeed, as theretofore, so far as this defendant is informed, had not been thought of."

The contention between the parties as to this part of the case arises upon the construction to be given to the contract. To what claims did this contract relate? It is claimed by the plaintiff that the contract related to all claims that might be prosecuted by the defendant Spalding arising under the act of 1866 and any subsequent legislation of Congress, whether under Senate bill 903 or House bill 3981, mentioned in the contract, or some other bill that might thereafter be introduced in Congress. It is claimed
215 that the language is comprehensive enough and specific enough to embrace all such claims.

On the part of the defendant it is claimed that the contract had relation to a particular class of claims then within the minds of the parties; that they are partly described in the contract and referred to by the language used in the contract. And it is claimed on the part of the defendant that he should be permitted to show the circumstances surrounding the parties relating to the subject-matter at the time of making the contract.

It is claimed by complainant that this would be to alter or change the plain meaning of the contract.

The subject-matter of the contract is 1,700 claims in hand and other similar claims expected to be sufficient in all to make about 40,000, his interest being in said claims now on hand and all that he might thereafter secure. He agreed to obtain all the claims of the class named that he could and subject the whole to be shared with the said George Mason.

It is clear from this language that the parties were contracting with reference to some class of claims understood between themselves. He agrees to sell an interest in all the claims in hand and all similar claims, and then he agrees to obtain all the claims he can of the class named. What claims are similar to those in hand, and of what class of claims is it that he agrees to procure all that he can?

We think this is a case where it is proper to introduce the circumstances surrounding the parties at the time of contracting for the purpose, not of changing the meaning of the contract or altering it, but for the purpose of throwing light upon the language used and ascertaining the true meaning of the contract. This case is similar in principle to a few cases that have been cited to us and to which we will refer.

In the United States *vs.* Peck, 102 U. S., 64, it is said: "Parol evidence of the surrounding circumstances is permissible to show the subject-matter of a contract."

That is the syllabus.

"Peck, the claimant, entered into a contract with the proper military officer to furnish and deliver a certain quantity of wood and hay to the military station at Tongue river in the Yellowstone region on or before a specified date. He furnished the wood, but failed to furnish the hay, which was furnished by other parties at an increased expense. The accounting officers of the Government claimed the right to deduct from the payment of claimant's wood account the increased cost of the hay. Whether this could legally be done was the principal question in the cause.

"The court, upon examination of the contract and all the surrounding circumstances of the case, were of opinion that the contracting parties, in stipulating relating to hay, contemplated hay to be cut in the Yellowstone valley and specially at the Big Meadows, near the mouth of Tongue river, which was, indeed, the only hay which the claimant could have procured within hundreds of miles, and which it was known he relied upon. The Government officers, fearing that the claimant would not be able to carry out his contract, and it being absolutely necessary that the hay should be had, allowed other parties to cut the hay at Big Meadows and therewith to supply the Tongue River station. The claimant complained of the double injury, first, of giving the hay which he relied on to other parties; and, secondly, of charging him for the increased expense of getting it."

Mr. Justice Bradley, in delivering the opinion of the court, says:

"We think the facts of the case clearly bring it within the rules allowing the introduction of parol evidence; first, for the purpose of showing by the surrounding circumstances the subject-matter of the contract, namely, hay to be cut and gathered in the region where it was to be delivered."

He further says:

"That the subject-matter of a contract may be shown by parol evidence of the surrounding circumstances, see Bradley *vs.* Washington, Alexandria and Georgetown Steam Packet Co., 13 Peters, 83; Thorington *vs.* Smith, 8 Wall., 1; Maryland *vs.* Railroad Co., 22 Wall., 105; Reed *vs.* Insurance Co., 95 U. S., 23; 1 Greenleaf's Evidence, sec. 277; Taylor's Evidence, sec. 1082."

It will be noticed that the written contract in this case does not include anything as to the description of what was to be furnished or the place from which it was to be furnished. The court, however, permitted parol evidence to be introduced for the purpose of showing that the parties at the time of making the contract contemplated hay to be cut at the mouth of Tongue river at Big Meadows, to supply the Tongue River station near the mouth of Tongue river; that this was the only hay that could be furnished at any reasonable expense by the claimant in order to fulfill his contract.

In Reed *vs.* The Insurance Co., 95 U. S., 23, the syllabus reads thus:

"A policy of insurance on a vessel at and from Honolulu via Baker's island to a port of discharge in the United States, contained

a clause: 'the risk to be suspended while vessel is at Baker's island.' Held, in view of the circumstances which must be supposed to have appeared to the parties at the time of making the contract, that the meaning of the clause is that the risk was to be suspended while the vessel was at Baker's island for the purpose of loading whether actually engaged in the process of loading or not.

"Although a written agreement cannot be varied by proving circumstances out of which it grew and which surrounded its adoption, it must be resorted to for the purpose of ascertaining its subject-matter and the standpoint of the parties in relation thereto."

In this case the vessel insured was lost while in port at Baker's island for the purpose of loading, though not actually engaged in loading at the time of its loss.

Mr. Justice Bradley in this case says:

"This case upon the merits depends solely upon the construction to be given to the clause in the policy before referred to, namely, 'the risk to be suspended while vessel is at Baker's island loading,' and turns upon the point whether the clause means while the vessel is at Baker's island for the purpose of loading, or while
216 it is at said island actually loading. If it means the former, the company is not liable; if the latter, it is liable.

"A strictly literal construction would favor the latter meaning; but a rigid adherence to the letter often leads to erroneous results and misinterprets the meaning of the parties. That such was not the sense in which the parties in this case used the words in question is manifest, we think, from all the circumstances of the case. Although a written agreement cannot be varied (by addition or subtraction) by proving all the circumstances out of which it grew and which surrounded its adoption, yet such circumstances are constantly resorted to for the purpose of ascertaing the subject-matter and the standpoint of the parties in relation thereto. Without some knowledge derived from such evidence, it would be impossible to comprehend the meaning of an instrument or the effect to be given to these words of which it is composed. This preliminary knowledge is as indispensable as that of the language in which the instrument is written. A reference to the actual condition of things at the time as they appeared to the parties themselves, is often necessary to prevent the court, in construing their language, from falling into mistake and even absurdities."

On this subject Professor Greenleaf says:

"'The writing, it is true, may be read by the light of the surrounding circumstances in order more perfectly to understand the intent and meaning of the parties, but as they have constituted the writing to be the only outward and visible expression of their meaning, no other words are to be added to it or substituted in its stead. The duty of the courts in such cases is to ascertain not what the parties may have secretly intended as contradistinguished from what their words express, but what is the meaning of the words they have used.'" 1 Greenleaf Ev., sec. 277.

Again:

"The principles announced in these quotations, with the limita-

tions and cautions with which they are accompanied, seem to us indisputable; and, availing ourselves of the light of the surrounding circumstances in this case, as they appeared or must be supposed to have appeared to the parties at the time of the making of the contract, we cannot doubt that the meaning of the words which are presented for our consideration is that the risk was to be suspended while the vessel was at Baker's island for the purpose of loading, whether actually engaged in the process of loading or not. Taking these words in absolute literality, the risk would only be suspended when loading was actually going on. It would revive at any time after the loading was commenced if it had to be discontinued by stress of weather or any other cause. It would even revive at night when the men were not at work. This could not have been the intent of the parties. It could not have been meant by the words 'while vessel is at Baker's island loading.'"

Looking to the surrounding circumstances of this case, we find that the parties discussed a class of claims entirely different from the class of claims which were finally prosecuted by the defendant and the amounts recovered for which he received these fees. He had on hand then, for which he had powers of attorney, some 1,700 claims. He had a list of 7,500 claims under the act of 1866, which he presumed to be collectable under that act and under subsequent legislation then contemplated. He states to the complainant by written statement, which the evidence substantially shows he did give the complainant at the time of this negotiation, that he supposed there would be from 8,000 to 10,000 claims altogether under the act of 1866, and of that number he hoped to get, or expected to get, 4,000 himself, having already acquired 1,700. It is stated in this paper that these claims are all claims in excess of $25.

It appears by the answer, too, that upon the construction which he gave to this act of 1866 at the time the contract was made, which both parties admit was discussed between them, the act related to compensation due to postmasters prior to the passage of the act of 1866, and would be recoverable for single quarters where the compensation would be more than the amount which was actually paid to the postmasters. Under a subsequent statute, passed in 1883, three years afterwards, not the Senate bill, nor the House bill mentioned in the contract, by the construction of the Postmaster General of the act of 1866, as modified by this act of 1883, it was subsequently held that the law did not apply to single quarters, but to a series of biennial quarters, and did not apply to compensations which might have been earned by postmasters under the act of 1854, in accordance with the section of the act of 1854, as specified in the act of 1866, to compensations already earned, but applied to compensations that might result for the benefit of postmasters after he passage of the act of 1866.

The effect of this was, as is agreed, and as is stated in the pleadings of both parties, to change the class of claims very materially. Many of the persons included in the list of 1,700 which the defendant had at the time of making this contract were excluded by this

construction of the Postmaster General, as well as of the list of 4,000 which he expected to get, as also of the list of 7,500 which he had upon his books at the time of making this contract.

That being the case, the question arises whether or not it is competent for the defendant in this case to introduce evidence showing the condition of the very subject-matter about which the contract was made, for the purpose of showing to what the parties referred when they spoke of certain claims already obtained, and certain similar claims which they expected would be obtained by the defendant for prosecution. Was it a general indefinite undertaking on the part of the defendant to procure and prosecute all the claims that he could under the act of 1866, and any subsequent legislation that might be enacted by Congress? Was it to give to this plaintiff, for the specified sum of $2,500, one-fourth of all that he might obtain thereafter in relation to such claims? Or was it in relation to some definite class of claims which the parties understood at the time and had in mind at the time they made their contract.

We think that the reasonable view favors the latter supposition.

That the parties contracted with reference to what they knew
217 or what they supposed they knew—as to claims that they believed had an existence at the time they made their contract rather than to some indefinite or unknown class of claims not then in the minds of the contesting parties. We think, therefore, that the parol evidence introduced by the defendant for the purpose of showing the surrounding circumstances, which was admitted by the court below and to which the plaintiff objected, was properly received and should be considered in construing this contract, not for the purpose of changing its meaning, but to give the true meaning to the language employed by the parties to the contract, and that the ruling of the court below, permitting this evidence to be introduced, and in applying it to the contract, and in holding that this contract related to the claims then in hand and then listed and referred to and understood to be in existence by the parties at the time of making the contract was right and should be confirmed.

There is some controversy whether the defendant at the time did not exaggerate the number of claims. There is not much question made about that, but the defendant stated the value of the claims to be $2,000,000. It turns out that under the construction given to the law by the Postmaster General, the value of these claims was less than seems to have been estimated loosely, by the defendant, and the payment of which was made subject of consideration by the plaintiff at the time of the negotiation, and that the gross amount of the fees was somewhat less; but this is not an action for fraudulent representations. It is an action to recover what the plaintiff claims is due to him upon the contract, and the purpose now is to ascertain the real contract obligation. There may be some controversy between the parties as to the surrounding circumstances, but the material facts that the parties discussed the claims on hand and the quantity of claims that would probably be procured and the sort of claims that would be prosecuted under the act of 1866 with

the added legislation then expected by the passage of either the Senate or House bill mentioned in the contract is not conceded are proved beyond question. Did the parties contract with reference to something they talked about as existing, or was it an indefinite and general contract to compel the defendant to prosecute all claims that might arise under the act of 1866 and any subsequent legislation of Congress with any construction that might be given to that legislation by the executive department? We think not. We think that it is immaterial; that there may be some variance between these two parties who testify as to some of the circumstances occurring at the time of the negotiations between them. It is agreed, however, that these things were discussed, and the parties do agree, not only in their testimony, but in their pleading, that the construction given to this legislation by the Postmaster General in 1883, and the Attorney General in 1884 was never contemplated or considered or thought of by either of the parties until about the time that construction was made; and they do agree, both in their testimony and in their pleadings, that this construction made a very material change. By that construction many of the claims which they had anticipated were wiped out and a much greater number of claims, less in value, were substituted and of a different character and for a different cause and for a different time, and embracing to a very considerable extent different persons from those embraced in the claims which were under contemplation by the parties at the time of making their contract.

There is another question in the case. It appears that some time after the making of this contract and after the defeat of the Senate bill and the adjournment of Congress without passing the House bill mentioned in the contract the defendant became disheartened, according to the averment of the plaintiff himself in his plea, and was proposing to give up all further efforts in relation to the matter, but was encouraged by the plaintiff to persevere upon a promise on his part to pay one-half of all the expenses after that time in regard to such prosecution, the original agreement being that he was to pay $2,500 and not to be chargeable with any expenses beyond that sum. The defendant says that, in consideration of this promise on his part, he agreed to continue his efforts to procure the needed legislation. Perhaps it should be mentioned that, by reason of time having elapsed as to the postmasters in office at the time of the passage of this act of 1866, at the time these salaries were earned by postmasters the law was no longer in condition to be executed without further legislation. Therefore it became necessary that there should be a further act of Congress; and in 1882 this defendant agreed, as he says in his answer, in consideration that the plaintiff pay half of the expense, to continue his efforts to get the needed legislation.

The court below found against the defendant on this part of his answer. He alleges that the expenses were very heavy, amounting to something like $60,000; that the complainant was liable to pay one-half of these expenses. But the court below found against the position of the defendant in this particular; but found for the de-

fendant as to the construction in regard to the class of claims embraced in the contract.

From this decree of the court below the complainant appealed. The defendant did not appeal from the decree against him in reference to the costs of the prosecution of these claims. No cross-bill was filed.

While this matter has been the subject of considerable argument between counsel orally and in their briefs, it is conceded by counsel for the defendant, the appellee, that if the court affirms the decree of the court below as to findings upon the question of what is embraced within the contract of the parties, as to that part of it which is against the complainant, and from which he appeals—if they affirm that, then the court must affirm the decree *in toto*, inasmuch as the defendant has not appealed from that part of the decree which is against himself. He only claims that that part of the decree might be modified and reversed upon the appeal of the defendant.

Inasmuch, then, as we affirm the decree of the court below, from which the complainant appeals, the decree will be necessarily affirmed *in toto*. We cannot recognize the right of the de-
218 fendant to have this matter reviewed when it was not appealed. There is nothing for us to decide.

The decree of the court below will be affirmed.

219 *Decree at Special Term.*

Filed Mar. 23, 1888.

This cause, coming on at the present term to be heard upon the pleadings and testimony, was argued by counsel and considered by the court. Whereupon it is, this 23d day of March, 1888, ordered, adjudged and decreed that the complainant is entitled to have and recover from the defendant one-fourth (¼) of each and every fee which has been collected or received by the defendant, or which may hereafter be collected or received by him, for claims prosecuted by him for postmasters and late postmasters for readjustment of their salaries pursuant to the act of Congress passed March 3d, 1883, in complainant's bill mentioned, which are included in the list of about seven thousand and five hundred (7,500) claimants, in the answer of the defendant mentioned, and that the complainant is not chargeable with any part of the expenses of the business of securing and prosecuting said claims.

It is further ordered, adjudged and decreed that the complainant is not entitled to any part of the fee or fees which have been or which may hereafter be collected or received by the defendant from any claimant not embraced in said list of about seven thousand and five hundred (7,500) claimants.

It is further ordered, adjudged and decreed that this cause be, and it is hereby referred to the auditor of this court, who is directed to state an account between the complainant and defendant showing—

First. How much the complainant is entitled to on account of

fees collected by the defendant from the several claimants embraced in the list of about 7,500 claimants above mentioned.

220 Second. What sum or sums, if any, have been paid by the defendant to the complainant *is* a credit thereon.

Third. What balance is due from the defendant to the complainant upon said account, and from what time it should bear interest.

Fourth. Any other matter or thing which may be pertinent or necessary to the stating of said account.

It is further ordered, adjudged and decreed that the complainant's motion for an injunction and receiver be denied.

221 *Appeal to General Term.*

Filed Mar. 23, 1888.

MASON *vs.* SPALDING. } 10830. Equity.

And now comes the complainant, by his solicitors, and appeals to the court in general term from the decree passed herein at the special term on the 23d day of March, 1888, and requests the clerk to so enter.

(Signed) COLE & COLE.

Appeal, as ordered, noted.
March 23, 1888.

BY THE CLERK.

222 *Undertaking for Appeal by George Mason to Gen'l Term.*

Filed March 24, 1888.

In the Supreme Court of the District of Columbia, the 24th Day of March, 1888.

GEORGE MASON, Plaintiff, *v.* HARVEY SPALDING, Defendant. } No. —.

The complainant having appealed to the general term from the decree pronounced herein on the 23d of March, 1888, in the special term, and Wm. E. Hodges, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to pay the costs of said appeal and any and all damages which may be awarded against complainant by said general term.

GEORGE MASON, *Appellant.*
WM. E. HODGES, *Surety.*

Approved.
W. S. COX, *J.*

223 Filed Jan. 23, 1889.

In the Supreme Court of the District of Columbia.

GEORGE MASON
v.
HARVEY SPALDING. } Equity. No. 10830.

This cause came on to be heard at the present term upon the appeal of the complainant from the decree of the special term, passed in this cause on the 23d day of March, 1888, and was argued by counsel.

Upon consideration whereof and because it appears to the court that there is no error in the record of the decree appealed from, it is, this 21st day of January, 1889, by the court in general term ordered, adjudged, and decreed that the said decree of the special term be, and the same is hereby, affirmed, and said cause is remanded to said special term for further proceedings in accordance with said decree.

E. F. BINGHAM,
Chief Justice.

224 In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } No. 10830, Equity Docket.

Report of Auditor.

This cause is referred to the auditor to state an account between the complainant and defendant showing—

"First. How much the complainant is entitled to on account of fees collected by the defendant from the several claimants embraced in the list of about 7,500 claimants above mentioned.

"Second. What sum or sums, if any, have been paid by the defendant to the complainant *is* a credit thereon.

"Third. What balance is due from the defendant to the complainant upon said account, and from what time it should bear interest.

"Fourth. Any other matter or thing which may be pertinent or necessary to the stating of said account."

After due notice I proceeded to execute this order of reference, and return with this report the depositions and exhibits submitted by the respective parties in addition to the evidence previously taken in the cause, together with the briefs of counsel.

The defendant Spalding being engaged in the prosecution of a certain class *or* claims against the United States, as set forth in the pleadings, about June, 1880, offered to sell to the complainant Mason, an interest in the said business, and on the 3d day of June, 1880, these parties entered into a written contract by which Spalding sold and conveyed to Mason—

225 "One-fourth of all his (Spalding's) interest in such claims now in hand and all that he may hereafter secure, and one-fourth of all his fees therein free from all charges for expenses of prosecuting said claims to collection thereof."

I quote this much of the contract for the reason that it affects the account to be stated and the issues made in this reference.

The defendant Spalding filed here a statement made up by States purporting to show the fees received by him in the cases included in the order of reference as well as some others. The aggregate of the fees received in all the cases enumerated in this statement is $60,522.51. Spalding, however, claims that many of these cases were sent to him by other attorneys and were not included or intended to be included in the sale and conveyance to Mason. These particular cases are specified and the fees received in them aggregate the sum of $5,176.80, which Spalding contends should be deducted from the gross aggregate of the statement.

I think the contract terms are sufficiently broad to include these claims.

"All of his interest in said claims now in hand or that he may hereafter secure."

There is no exception as to the source from or through which they might be secured, and the contention by Spalding that Mason's interest should be limited to claims secured with the aid of the money which Mason paid for his interest is not sustained by any of the facts. Nor is it consistent with the written offer of Spalding to sell an interest, which offer led up to the contract of sale.

I therefore take the gross aggregate of the statement as the starting point of the account.

226 It is then conceded by Spalding that there are two errors in the statement, the correction of which would increase the amount named as follows:

Alabama	$37 07
Missouri	20 00

Spalding also filed additional statements of fees received and which should be added, as follows:

Defendant's Schedule	A	$841 30
Ditto	C	949 65
Ditto	D	488 74
Ditto	F	307 09

These are accepted by the complainant.

In the examination of the defendant's books containing a list of the claims which are the subject of this account there appeared to have been entered claims described in the testimony as half numbers, and the fees received in these cases are not included in the statements of the defendant above referred to. These claims are enumerated in another paper marked "Defendant's Schedule B."

The defendant contends (see his brief) that these claims do not belong on the Mason list, that they were subsequently entered there in error, and that they are not covered by the decree.

The order of reference directs an accounting as to the claims contained "in a list of about 7,500 cases mentioned in the defendant's answer." No list was filed with the answer, nor has any list been produced in the progress of the cause other than the schedules made by the defendant for the purposes of this reference and the books in which these half numbers appear. It is clear, therefore, that the court in making the decree had no such list before it and
227 could not intend to restrict the accounting to any particular claims by names or numbers. Indeed the whole case shows the intention of the court to have been to divide the cases as to which the bill sought an accounting into two classes, the dividing line being the change of construction by the Government officers of the law relating to these claims.

So far as appears here, these half-numbered cases are of the same class as the others on the Mason list, and are therefore included in the contract of sale, and not excluded by the decree.

The evidence as to the time of their entry on the list and the attempted withdrawal of them from it is not at all clear.

These fees aggregate the sum of $1,678.48.

In entering upon his list the fee received upon the claim of J. W. Stone, of Belfere, Ohio, the defendant deducts the sum of $25 as travelling expenses of his son whom he sent out to secure the collection of this and some other fees. The complainant objects to this deduction and claims that the amount should be added to the fee as entered.

In general terms the complainant asserts (see brief of counsel) that the defendant is entitled to no deduction on account of alleged expenses of collecting the fees, and that the order of reference does not authorize the auditor to go into the question of expenses.

As I construe the order of reference, it is sufficiently broad to take in both sides of the account, and give the accounting party the credits to which the contract and the evidence entitled him.

The contract ex*h*onerates the complainant's interest from any charge for expenses of prosecuting the claims, but is silent as to expenses of collecting or securing the fees. The restricted
228 character of this provision indicates that the parties in convention did not intend to relieve that interest from its equitable share of the latter burden.

This question arises again in connection with a more important credit or allowance claimed by the defendant. As to the item under discussion the amount is small and the emergency may have justified the expenditure without waiting to consult the complainant.

I therefore allow this fee to stand as entered.

In the defendant's statement or list of fees received appears $301.02 received from George Phillips of Key West, Florida, while the amount in fact received from Phillips was $508.50. The complainant contends that the difference should be added to the fee as entered.

The proof shows that the prosecution of this claim was undertaken upon the same terms as other claims, for a fee equal to twenty-five per cent. of the amount collected. The fee in this case, calcu-

lated at this rate upon the amount allowed and paid, would be $301.02, the sum entered upon the complainant's list. It appears, however, that the allowance to Phillips by the Government was much greater than he expected, and that in view of this fact, and as the result of correspondence between himself and the defendant after the allowance, he promised or offered to pay and finally did pay $508.50. The defendant contends that the excess over the agreed fee was a gift or gratuity to him, not to be treated as a part of fee and in which the complainant had no interest. I am unable to agree with this theory of the defendant. He sold one-fourth of all his fees in these cases and this was simply an extraordinary fee or reward and not a personal gratuity to him.

229 The amount to be added to the defendant's statement on this account is $207.48.

In the defendant's summarized statement of account as formulated in his brief, he claims a deduction of twenty per cent. from the aggregate for "fees lost by change of the law March 3, 1883, and by department circulars." In his argument this appears as a claim for allowance of costs and expenses of securing or collecting the fees and is made up of office rent, clerk hire, stationery, postage and miscellaneous expenses incurred in his business and including the collection of these fees. In his testimony herewith, on pages 39 and 49, he estimates these several expenses as incurred in securing all the fees of his office during a given period as being twenty per cent. of the fees realized and contends that the fees in which the complainant had an interest should be subject to these expenses at the same rate.

I have heretofore stated my conclusion that Mason's interest should be charged with its just share of expenses necessarily and reasonably incurred in securing and realizing the fees of which he was to receive a share. This, perhaps, should be qualified to this extent, that before any considerable amount of such expenses were incurred the complainant should have been notified. Some of these expenses were incurred in unsuccessful endeavors to secure fees, and before his interest in fees collected can be charged with expenses connected with fees not collected it should appear that he assented to such expenditures, or at least had knowledge of them. Neither of these conditions are shown to exist here.

230 The defendant kept no current account of these expenditures even in gross and is now compelled to estimate some of them upon the basis of unreliable data. He made no attempt to keep any separate account of those incurred in securing the Mason fees as distinguished from his other business, as he should have done if he intended to claim allowance for them in his settlement with the complainant.

Nor is the evidence before me sufficient to establish the necessity for or reasonable character of these expenses.

I therefore cannot allow them by way of deduction or otherwise.

The next item is the payments made by the defendant to the complainant on account of these fees.

The defendant filed several accounts differing in the periods of

time covered by them respectively, and the complainant in connection with his testimony, produced a book of entries a copy of which will be found in the depositions.

There is no substantial difficulty as to the money account between these parties after the 19th day of May, 1885, but there is a difference between them over the condition of the account at that date. Prior to that time there had been mutual transactions including loans by Mason to Spalding, aggregating $800, and other loans or payments by either party to the other.

On the 19th of May, 1885, Spalding gave Mason a check for $250, which is the first item in Spalding's statement of payments on account of fees as presented in his brief.

Mason claims that if the said statement (aggregating $2,670) is to be taken as correct, it leaves the $800 of loans by him to Spalding prior to 1885, still unpaid, with interest.

231 This is controverted by Spalding, who asserts having made payments of certain sums of money in 1884, partly by checks and partly in currency. The latter (in currency) are disputed by Mason. The case as to these rests largely upon the differing recollections of the two. It seems certain, however, that the $800 of notes or loans were paid by Spalding in whole or in part. He made the payments of August 6th and September 11th, 1884, for he produces the checks. Mason does not credit these in his book although it purports to cover the periods in which they were made. His account in the book is evidently incomplete in this and other particulars, and as to both periods, before and after May 19th, 1885.

After a careful analysis of the evidence, oral and documentary, I am led to the conclusion that the money dealings between these parties prior to May 19th, 1885, were closed and settled, and that Spalding's credits for payments on account of fees should include and begin with the check of that date.

The aggregate of these credits is $2,670.

In accordance with the views herein expressed I have stated the account directed in Schedule No. 1, herewith.

I am also directed to report from what time the balance due from the defendant to the complainant should bear interest.

The contract contains the following provision:

"All the fees collected by the said Spalding shall be accounted for and settlement shall be made from time to time as collections are made, and a division thereof shall be made, three-fourths going to said Spalding and one-fourth to said Mason."

232 The complainant now claims that his share of each fee should bear interest from the date at which the fee came to the possession of the defendant.

I think, however, that a fair construction of the contract terms would be, that periodical settlements were intended by the parties rather than a settlement and division of each fee as collected, and I have adopted monthly periods as the basis of calculation of interest on balances due.

In Schedule No. 2 I have made a statement accordingly.

JAS. G. PAYNE, *Auditor.*

SCHEDULE No. 1.

Account of Fees Received by the Defendant in the Cases Included in the Order of Reference and of Payments Made by Him to the Complainant on the Same Account.

Amount of fees received by the defendant as per first statement filed		$60,822 51
Add for error in Alabama	$37 07	
" " " " Missouri	20 00	
		57 07
Add defendant's Schedule A		841 30
" " " B		1,678 48
" " " C		949 65
" " " D		488 74
" " " F		307 09
" balance of fee from George Phillips		207 48
" fee from E. J. Gerry		4 15
		$65,356 47
233 One-fourth to complainant		16,339 11
Less payments as follows:		
May 19, 1885	$250 00	
June 10, "	100 00	
Oct. 4, 1886	100 00	
" 16, "	20 00	
" 19, "	100 00	
Dec. 14, "	100 00	
" 29, "	100 00	
Jan. 4, 1887	100 00	
Nov. 3, 1886	200 00	
Feb. 2, 1887	800 00	
	$1,870 00	$16,339 11
Aug. 17, 1886	400 00	
Oct. 6, "	300 00	
Nov. 23, "	100 00	
		2,670 00
Balance due complainant		$13,669 11

JAS. G. PAYNE, *Auditor.*

Schedule No. 1.

Statement of Dates from which Interest Should be Calculated on the Monthly Balances Payable by the Defendant to the Complainant.

Amounts.	Dates.
$9 51	June 1, 1884.
34 94	Aug. " "
642 79	Sept. " "
823 68	Oct. " "
68 90	Nov. " "
64 02	Dec. " "
234	
2 13	Jan. 1, 1885.
1 60	Feb. " "
30 69	M'ch " "
1 30	Apr. " "
2,523 16	May " "
1,797 80	June " "
270 44	July " "
34 87	Aug. " "
4 98	Sept. " "
2 66	Oct. " "
11 68	Nov. " "
15 44	Jan. 1, 1886.
6 05	Feb. " "
3 35	M'ch " "
2 91	May " "
13 33	July " "
170 82	Oct. " "
765 99	Nov. " "
510 26	Dec. " "
1,423 04	Jan. 1, 1877.
568 96	Feb. " "
435 46	M'ch " "
959 40	Apr. " "
193 77	May " "
126 76	June " "
71 51	July " "
7 04	Aug. " "
4 81	Sept. " "
17 33	Oct. " "
14 30	Dec. " "
12 43	Jan. 1, 1888.
3 75	Feb. " "
53 81	Apr. " "

235 *Schedule No. 1.*

(Continued.)

$349 54	May 1,	1888.
416 11	June "	"
347 04	July "	"
17 56	Aug. "	"
149 77	Sept. "	"
211 95	Oct. "	"
644 87	Nov. "	"
450 63	Dec. "	"
927 21	Jan. 1,	1889.
167 74	Feb. "	"
92 17	M'ch "	"
20 61	Apr. "	"
838 24	Oct. 22,	1887.

Interest on Payments.

$250 00	from	May 19,	1885.
100 00	"	June 10,	"
400 00	"	Aug. 17,	1886.
100 00	"	Oct. 4,	"
300 00	"	" 6,	"
20 00	"	" 16,	"
100 00	"	" 19,	"
200 00	"	Nov. 3,	"
100 00	"	" 23,	"
100 00	"	Dec. 14,	"
100 00	"	" 29,	"
100 00	"	Jan. 4,	1887.
800 00	"	Feb. 2,	"

JAS. G. PAYNE, *Auditor.*

236 MASON *vs.* SPALDING.

TUESDAY, *January 29th*, 1889—2 o'clock p. m.

Hearing pursuant to notice.

Present: Mr. Cole, for the complainant, and Mr. Spalding in person.

Mr. COLE: I move that the auditor require Mr. Spalding to file a statement containing the name and post-office address of each claimant in the list of about seventy-five hundred mentioned in the decree whose claims have been allowed by the Post Office Department and the amount of each claim allowed, the amount of each fee which he has received from each claimant, and the date of the receipt thereof by him, and that said list classify the claims by States, and that he also file with the auditor the book containing the list of about seventy-five hundred claims mentioned in the decree.

The auditor asks Mr. Spalding what he has to say in response to this request.

Mr. SPALDING: I have this to say, Mr. Auditor, that in consequence of the act of March 3rd, 1883, the drafts in payment of those claims or warrants contemplated in the transaction between Mr. Mason and myself were directed to be sent, not to the attorneys, but to the claimants; that there was an entire change in the law; that subsequently, when the allowances came to be made and payments made, the Postmaster General sent circulars to the claimants, my clients, in order to defeat the payment of the fees to me; that in consequence of those two material changes, wholly unlooked for, it became necessary to expend a large amount of money in order to collect any fees at all in anticipation of the payment of the fees. The collection of the fees would have to be abandoned almost entirely unless that outlay was made. An enormous amount of correspondence resulted, in order to get from these parties guaranty contracts, so that the payment of the fees might be assured, notwithstanding the present receipt of the warrant, and also notwithstanding the attempt under the power and influence of the Postmaster General to defeat the payment of the fees, and the gross amount of fees that appear upon the record in my office is not the real amount of fees that I have received.

I shall file a present statement of those outlays with the auditor. There is no objection to furnishing the list that they ask for.

The AUDITOR: How soon can you do that?

Mr. SPALDING: I want all the time that can be given, for the reason that I have all my clerks in the office engaged at the present time in collecting these fees and it is a matter that has to be attended to; otherwise large damage results. I cannot make out the list and statement asked for within a month.

Hearing adjourned to Friday, February 8th, 1889, at 2 o'clock p. m.

237

MASON
vs.
SPALDING.

On the 5th of February the defendant, Mr. Spalding, filed a statement for the State of Alabama, of the filing of which the complainant was notified.

MASON
vs.
SPALDING.

FRIDAY, *February 8th*, 1889—2 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. W. L. Cole, for the complainant, and the complainant and defendant in person.

The defendant files a statement for the States of Arkansas and Arizona.

Counsel for complainants objects to the form in which these statements are made, not so much on account of the matters contained as the arrangement of the schedules, for the reason that those schedules should be tabulated in such a way as to show the amount of fees collected in columns so that they may be readily footed. As a further ground of objection he states that the schedules contain the names of persons whose claims do not appear to have been allowed, which is unnecessary and leads to confusion.

The defendant states that those names can be omitted in the schedules to be filed hereafter; that by omitting the names of all those where no allowance has been made the work can be done with twice the rapidity.

The complainant moves the auditor to require the defendant to produce here and to leave with the auditor for the purposes of stating the account in this cause the book containing the list of about 7,500 claims in the defendant's answer in this cause mentioned, together with the memoranda which were made by the defendant in the preparation of his answer in this cause in which he ascertained the amount of fees collected at the date of filing said answer to be about $36,000, and also the jackets, with their contents, containing the papers relating to all of the said 7,500 claims, including those which are allowed as well as those which are not allowed.

The defendant states that to do that would be destructive to the business itself to a great extent; that there is a great amount
238 of correspondence going on today in reference to the collecting of the fees in these various cases; that if those records should be brought into the auditor's office that correspondence would end, and it would end the business.

Counsel for complainant states that he would modify the motion heretofore made by him so as to state that the jackets and papers in the cases in which the fees have not been collected may be omitted.

The defendant states that it would be impossible for any one intelligently to state the account in the auditor's office unless details of men were made from defendant's office; that he objects to the motion made by the complainant, and that if the motion is to be entertained he would like to have an opportunity for his counsel to present the case properly to the auditor.

In reply to a question from the auditor the defendant states that he can make such a statement as is called for within a month or possibly less than that; that he will do his best to make that statement within the thirty days, and will engage to make the account within the specified time, and that if it is not done he will give a satisfactory reason for it; that he will engage to render an account here of all the dues collected within thirty days.

Hearing adjourned to Friday, March 8, 1889, at 2 o'clock p. m.

238½ MASON *vs.* SPALDING.

FRIDAY, *March 8th*, 1889—2 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, for the complainant, and Mr. Phillips, for the defendant, and the parties to the suit in person.

The defendant presents and files schedules prepared by States containing the name and post office of the several claimants in the list of about 7,500 mentioned in the decree as requested by the counsel for the complainant at the hearing of January 29, 1889; also a summary statement in connection with the said schedules; which statement and schedules are submitted to the counsel for the complainant for his examination.

Counsel for complainant further calls upon the defendant for a statement of the credits claimed by the latter, by way of payments to the complainant on account of the said fees, and also requests the defendant to deposit in the hands of the complainant's counsel the book containing the list of the said claims referred to in the proceedings in this reference of February 8, 1889. The defendant is requested to deliver the said book and his statement of payments on or before the 12th inst., and the further hearing in this reference is adjourned to Thursday, the 14th inst., at 2 o'clock p. m.

On March 12th, 1889, Mr. Spalding filed a statement of the credits claimed by him.

March 14th, 1889, Mr. Mason filed a counter-statement.

239 MASON *vs.* SPALDING.

THURSDAY, *March 21st*, 1889—2 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, for the complainant, and Mr. Philips, for the defendant.

HARVEY SPALDING, the defendant, sworn and examined—

By Mr. MASON, the complainant:

Q. The book that is presented as containing the 7,500 claims mentioned in the answer was not complete at the time of the contract, was it, Mr. Spalding?

A. That, I think, appears in the former evidence. The slips which formed a part of the book were prepared ready for registration in the book, but they were not all registered.

Q. Now, what other books had you in the office at that time containing lists of claims—that is, on the 3rd of June, 1883?

A. I had no other books. I had books subordinate to this book which enabled me to prepare this list.

Q. You had other books from which this book was prepared?

A. I had other books which I exhibited at the time my deposition was taken in my office.

Q. Are the names on those books all included in this list of 7,500?

A. Those books do not contain a list of claims. They contain briefs of names of postmasters and names of post offices from which I was enabled to prepare this register. Those were used as aids to prepare this register.

Q. Well, what is this register? Is it anything more than the names of the postmasters and post offices?

A. The book shows for itself what it is.

Q. That is what it is, is it not?

A. It contains a list of the names of claimants under the act of June 12th, 1866, which I had prepared by several years of labor; from all the data I had I prepared that list.

Q. Have you books that show the amount of each claim that has been allowed by the department from these 7,500 claims and of the fees that have been collected on account of those claims?

A. No; no separate book. The jackets show the fees paid and collected in every case. It is registered on the jackets. I have registers of claims allowed that I obtained, on the lists I prepared after this Mason list, as well as the allowances made of claims upon the Mason list, and they are registered in regular order in four different books. These allowances on the Mason list are scattered all the way through with the other allowances and they are all registered in books—all allowances including them.

240 Q. Then you did not keep separate accounts of these claims which you call the Mason list from those other claims which you say Mason was not interested in, but mingled them all in one account?

A. No; I did not have any account of any of the claims for convenience. All claims that I obtained were registered in my office, and they included the Mason claims.

Q. And the Mason claims were not kept separate from the other claims?

A. The numbers were always kept separate; they were distinguished by distinct numbers.

Mr. Mason asks for the production of those books in order to verify these accounts, and states that they have no other check than from those books.

Mr. SPALDING: The books are in my office and can be examined there, but it would be impossible for me to spare them out of the office. They contain the registration of my whole business.

By Mr. COLE: How many of the books are there?

A. Four.

Q. And from these books you have made up the account of fees collected which you have filed in this suit?

A. Yes; and from the jackets themselves. One verifies the other.

Complainant's counsel now requests the auditor to direct the defendant to produce for examination and verification the original books of entry which contain the list of claimants, the allowances that have been made, and the fees that have been paid in each case.

The WITNESS: The accounts and the books are not the original entries The original entries are on the jackets and the books are prepared from the jackets.

The AUDITOR: The complainant is entitled to have produced at the sessions of this reference such books in the possession of the defendant as contain entries relating to the claims involved in the schedule filed by the defendant in this reference for an examination of such portions of those books as contain entries relating to the said claims.

By Mr. MASON:

Q. To what date are collections reported in the accounts which you have returned?

A. Up to the date the report was made.

Q. What was that?

A. I don't know.

Q. How many and what fees have been since collected?

A. A list is prepared in the office. I cannot state. I have not examined it.

Q. Have any adjustments been made by the department of claims not included in the schedule filed for which an appropriation was made by the last Congress—that is, Schedule 3?

A. There have been no adjustments whatever made and
241 they have absolutely refused to make any more adjustments on the claims that have been presented in the department.

By Mr. COLE: The department, then, is making no other adjustments, as I understand it?

A. They do not intend to allow any more claims at all than have been included in the third schedule.

By Mr. MASON:

Q. Have they entered upon the payment of claims included in that schedule?

A. They paid some of them.

By Mr. COLE:

Q. In the usual course of business how long will it probably require to complete the payment of claims already adjusted by the department?

A. All the fees that are obtainable on these claims can be probably obtained within about a month or 6 weeks.

Q. That does not answer my question. In the usual course of business how long will it probably take to complete the payment of claims already adjusted by the department?

A. Well, a month.

Q. The collection of fees is sometimes delayed considerably after the payment of the claims, I presume?

A. Yes.

By Mr. MASON:

Q. On the book heretofore produced are entered memoranda of small sums paid you by claimants. Have you included these payments in your accounts rendered?

(Question objected to and ruled out because the book is not present and the particular memoranda pointed out.)

Q. In a very large number of cases reported the fee appears to be a little short—50 cents, a dollar, or two dollars or five dollars of the regular fee of 25 per centum. I call for an explanation of this difference.

A. I have entered the gross amount of fee collected in each case. I have charged against the gross amount of fee the expenses for postages and clerk hire and other expenses absolutely necessary to collect this gross sum. The gross amount of fee I received in many cases is 25 and 50 cents less than the regular per cent. agreed upon; that was taken by the banker or local agent, and in a few instances where it is $5 less the sum was taken out by a local attorney; taken out of the fee and remitted to me the balance, which was the gross amount I received.

Q. I have taken up before me the schedule of California. The first claim is $57.86; the fee is $14.45, which is 25 per centum; the second claim, the allowance is $173.34; the fee is $42.33, which should be $43 and some cents instead of $42?

A. That difference never came into my hands. I have entered in every case the total amount of the fee that came into my hands after the outlay I made to get it.

Q. Can you tell what the outlay was in this case that I have just referred to?

242 A. The difference between the 25 per cent. and the amount I have entered—the gross amount I have entered as having been received in that case—was taken by a bank or a local agent to whom it had been sent. I sent drafts to local banks for my fee and they deducted oftentimes 25 and 50 cents and sometimes a dollar.

Q. Cost of collection?

A. It was caused in that way—the bank took it.

Q. Your explanation as to this item, I suppose, applies to all?

A. To all; yes.

Q. Well, these that you have reported are net fees, then?

A. No; they are gross fees in every instance. The account I brought in here shows the gross fees I have collected, and if it is in any instance less than one-fourth of the fee that never was received by me.

By Mr. COLE:

Q. And the difference is accounted for by the expense incurred in the collection of the fee?

A. It is generally accounted for by exchange charged for the collection of my fee drafts.

Q. And if you employed an attorney he deducted a percentage?

A. Well, in such cases the amount of money that he sent has been taken as the gross amount of fee collected in that particular case.

Q. So that the fee you have entered here in these schedules is the amount of money which you actually received in each particular case?

A. I never received that amount of money in each particular case, because I had to reimburse the expenses.

Q. I am not speaking of what you had to lay out.

A. I cannot be trapped into making any such statement as that, because it is not true.

Q. I ask you a question, whether, as I understand you to testify, that these discrepancies are accounted for by the deductions made in the course of the collection, sometimes by the banks, sometimes by local attorneys or agents that you have employed to make the collection for you; is that not what you have said?

A. These deductions are charges in the way of exchange, generally made by the banks to which I sent my fee drafts for collection. There are a very few cases in which an attorney had to be employed, a local attorney, who made the collections, and the amount of money that he sent to me in that particular case is accounted for as money received by me in that case—the gross amount of money I got.

Q. Well, then, the amounts that you have entered here in these schedules was the amount of money that you actually received?

A. It is the gross amount of money I have received, and it is subject to the outlay I made to get it.

Hearing adjourned to Tuesday, March 26th, 1889, at 11 o'clock a. m.

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MASON
vs.
SPALDING.

TUESDAY, *March 26th*, 1889—11 o'clock a. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, for the complainant; the complainant in person; Mr. S. F. Phillips, for the defendant, and the defendant in person.

The defendant produces the book called for at the last session, being one of the four books named, and the same is submitted to the complainant for examination.

Hearing adjourned subject to notice.

244

MASON
vs.
SPALDING.

WEDNESDAY, *April 10th*, 1889—2 o'clock p. m.

Hearing pursuant to notice.

Present: Mr. Cole, for the complainant, and the complainant in person and the defendant in person.

Mr. COLE: I desire to file on behalf of the complainant exceptions to this statement of account of fees collected by the defendant and filed by him in response to the complainant's request in this cause.

Mr. COLE: I desire now to move that the auditor require the defendant to produce here the four several books upon which these claims have been registered and an account kept of the fees collected by him in his office for the purpose of offering those books in evidence touching the statement of account to be here made.

The exceptions filed by Mr. Cole are submitted to the defendant for examination and reply.

Hearing adjourned until Tuesday, April 16th, 1889, at 2 o'clock p. m.

245

MASON
vs.
SPALDING.

SATURDAY, *April 20th*, 1889—1 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, counsel for complainant, and the defendant in person.

HARVEY SPALDING examined.

By Mr. COLE:

Q. Mr. Spalding, have you with you the check and notes which you referred to in your accounts of payments which you claim to have made to Mr. Mason, amounting in the aggregate to $2,460.00.

A. I have some or all of them with me.

Q. I wish you would specify which ones of them you have with you and let the examiner check them off as you go along.

A. First, I have the check of August 26th, 1884, for $50, on Lewis Johnson & Co.; second, the check of September 11th, 1884, on Riggs & Co., for $500; 3rd, the check of May 19th, 1885, on Lew. Johnson & Co., for $250; 4th, the check of October 4th, 1886, on the Second National bank, for $100; 5th, I have the check of October 19th, 1886, on the Second National bank, of $100, and Mr. Mason's receipt of October 26th, 1886, for $20; 6th, I have the check of December 14th, 1886, for $100, on the Second National bank; 7th, I have check of December 29th, 1886, for $100, on the Second National bank; 8th, I have the check of January 4th, 1887, on the Second National bank, for $100; 9th, I have the check of April 18th, 1887, on the Second National bank, for $200; 10th, I have the note of

$200, dated November 5th, 1886, which was discounted by Mayse & Co., bankers, and paid by me with a check attached.

Q. What was the amount of that?

A. The note was $200, principal. I do not find the $800 note. I have it, however, in my papers somewhere, probably, not here.

Q. Pass that one.

A. I have the note of August 17th, 1886, for $400, discounted at the Second National bank, which I paid. I think the note of $300, dated October 6th, 1886, *for $300*, which was discounted, was for the benefit of Mr. Mason, at the Second National bank, and which I paid.

By Mr. MASON:

Q. When was that last one paid you refer to, Mr. Spalding?

A. The one dated October 6th I paid on November 9th, 1886.

246 The WITNESS: I find the $800 note here now, dated February 2nd. That covers all of them specified except the last, October or November 23rd, and I have one of the notes connected with that transaction, dated November 10th, 1886. Well, I have two notes, both of which relate to the transaction specified on November 23rd, one for $400 and one for $300. I paid the $300 note on the 12th of January, 1887, dated November 10th, 1886. I do not know but the whole of it should be charged in the account instead of the $100. I have the check with which I paid it.

Q. When do you say you paid it?

A. I paid it January 12th, 1887—the note dated November 10th, 1886, for $300. Oh, let me see; the note for $400, which is dated November 23rd, 1886, $300 of which was for myself and $100 for Mr. Mason. I made a record at the time that he had $100 of that $400. I have no explanation here with reference to the other note of November 10th, 1886, for $300, which I paid on the 12th of January. It is not charged in the account.

Q. Well, you are wandering way off from the question. You are going into lots of notes I didn't ask you anything about. I simply asked you if you had the notes and checks which you refer to in that account. I simply want you to mention such of them as you had and show them to me. I wanted to see them.

A. It is impossible to have answered any better than I have, because there were 3 or 4 notes connected with one or two of the items. I have already answered, however.

Q. Will you now let me see such notes and checks which you have which you say are connected with that account?

A. Yes; I will hand them to you in the order. Here is the first one (handing Mr. Cole a paper). (Witness hands the checks and notes hereinbefore referred to one by one to Mr. Cole.)

Q. You have got one here that you have not included?

A. I have one $100 one which I have not included in that account, dated November 10th.

Q. You got the proceeds of that note when it was discounted. There is Mr. Mason's check (handing witness check) which checked out the proceeds of that note when it was discounted. That is the

reason why you did not include it in there. You got the proceeds of it and paid it and it did not go into the account.

A. Yes; that is the reason.

Q. Now, then, you did not put it in at all, so it is not in the account?

A. Yes; and I have a check here, dated April 19th, 1887, paid Mr. Mason which is not in this account.

Q. How much is that check?

A. $200, April 19th.

Q. Of what year?

A. 1887. It was given to Mr. Mason and paid on his endorsement and Hodge's endorsement. It is not in that account.

Q. Well, there is the one that paid it back, I guess (handing witness check)?

247 A. Yes; that is it.

Q. Mr. Spalding, look at this note of October 6th, 1886, for $300, for one month, and say whether that note was not renewed at maturity instead of being paid (handing witness note).

A. It was paid by my check of that date. I made such an entry upon it.

Q. That would be anyway, even if it was renewed. You would give your check for it.

A. I have the check here with which I paid the note.

Q. Still that would not disclose whether it was a renewal or not.

A. Of course, if the note was renewed there was another note credited to me and I took care of it; I cannot tell right now whether that was so or not.

Q. Mr. Spalding, I hand you a check of Mr. Mason to your order, dated May 13th, 1887, purporting to be endorsed by you. I wish you would state whether that was not given to you finally in payment of that note of October 6th, 1886, and, if it was not, what it was given for.

A. I could not state what it was given for unless I should examine a lot of old notes that we were exchanging back and forth. It was not given me for any such purpose as that.

Q. Are you satisfied that it was not given you in payment of that $300 note or in consideration of it?

A. I am satisfied it was not. I haven't got any note to respond to it here.

Q. Were there any other pending notes between you and Mr. Mason at the time of the giving of that check except the $800, the $300, and the $400?

A. Mr. Mason had me endorse for his benefit several times and took care of the notes, and this is undoubtedly one of those transactions. I cannot now state at what times. I had to get money from the Second National bank by endorsements for him.

Q. That is your endorsement on that check?

A. Yes, sir.

Q. And it is Mr. Mason's check?

A. Yes, sir.

Q. Now I show you another paper, purporting to be the check of Mr. Mason to your order, dated November 27th, 1886, for $300. I wish you would say whether that check was not given in payment of that note of October 6th, 1886, and, if not, what that was given for.

A. Before going into this I object to this sort of testimony. Mr. Mason has these check- and, of course, it is for him to say what they were given to me for.

The AUDITOR: Still he may ask you that question, Mr. Spalding, in order to get your recollection of that.

A. They are new to me and require an examination of my records.

(The last preceding question is read again to witness, and he says:)

A. It was not given in payment of that note, for I paid it myself with my own check. This check was evidently given me to
248 settle some note transaction—some loan between ourselves. It was no payment to me on account of these items that I have brought in here at all.

Q. Do you remember? You say "evidently." State whether you remember now what that check was given to you for.

A. I cannot remember without going over my records and comparing it that way with these old notes, such of them as I have and such as Mr. Mason may have.

Q. Was not that check given you for the proceeds of discount of that $300 note?

A. No; I paid the note with my check.

Q. Well, you are not able to give——

A. (Interrupting.) I want to see both of those checks.

Q. Well, here are the two notes (handing witness same).

A. The note of October 6th I made a record of at the time it was discounted for Mr. Mason, and I paid the note at maturity. The money went into Mr. Mason's hands, and I paid it.

By Mr. MASON:

Q. What is the date of the note?

A. October 6th, 1886.

Q. What time?

A. It was for one month, and I paid it at maturity by my check.

By Mr. COLE:

Q. Well, that is all you have to say to that, is it?

A. These two checks of November 12th and 27th relate to the same notes discounted in the bank, and were a settlement of the matter at that time; settled by the checks; finally settled.

Q. Mr. Spalding, I will ask you whether there were any other notes in existence between you and Mr. Mason than the one of August 17th, 1886, for $400; the one of October 6th, 1886, of $300, and the one of February 2nd, 1887, of $800, and the renewals of them. Were not those the last notes that passed between you?

A. Mr. Mason asked me to endorse notes for him, and he had them discounted at the bank, and they were sometimes settled by these checks, but I cannot recall the particular notes. I can produce all the notes I have got—a hundred of them of various kinds—in my office, and more, too.

Q. Was it subsequent to the giving of those notes that I have mentioned?

A. The notes themselves will show. I will produce them, if you want them, at the next hearing, so far as they are in my custody.

Q. Now, you have that $300 note there, haven't you?

A. Yes.

Q. Let me see it, please.

A. Yes (handing counsel note).

Q. Now I show you a check, purporting to be given by Mr. Mason to your order, dated May 20th, 1887, for $400. I wish you
249 would state whether that check was not in final payment and return to you of the amount of $400 specified in the note of August 17th, 1886. I do not mean to ask whether Mr. Mason did not pay the note in bank when it was due, but whether that check was not a refunding of the money to you which you paid out on the note.

A. It never had anything to do with that note at all.

Q. What was that check given for?

A. Some of those note transactions that I referred to—discounts.

Q. Now, this first charge here, under date of June 10th, 1885—check of $300, less $160 repaid, which leaves a charge against Mr. Mason of $140. Didn't Mr. Mason refund to you in all $200 of that money—$160 at one time and $40 at another?

A. I don't think he ever refunded but the $160. I have no means of knowing that he refunded more than that.

Q. Do you remember of going away in August of that year?

A. August of 1886?

Q. 1885.

A. No; I do not remember it.

Q. Don't you remember of Mr. Mason's giving you two $20 bills one day in your office?

A. No; I do not remember anything about it.

Q. Do you remember, say in September, 1885, immediately after your return from your vacation, meeting Mr. Mason on F street, near the Riggs Insurance office, and calling his attention to the $100 still due you on account of that check, and asking whether he would repay the money or whether you should charge it to him in the account?

A. No; I have no recollection of it.

Q. Look at the 5 checks now shown you, purporting to be drawn by Mr. Mason to your order, the first one dated November 21st, 1883, for $250; the second, December 15th, 1883, for $250; the 3rd, March 29th, 1884, for $100; the 4th, March 31st, 1884, for $100, and the 5th, April 8th, 1884, for $100, and the five notes bearing the same respective dates and for the respective amounts of the

checks, and say if you recognize them as the genuine signatures of yourself and Mr. Mason.

A. Yes; they appear to be genuine notes and checks.

Q. Now, you have put in as a special offset to the amount of those checks and notes two checks, one dated August 26th, 1884, to Mr. Mason, for $50, and one dated September 11th, 1884, to Mr. Mason, for $500. Now, I show you two checks of Mr. Mason, one dated September 15th, 1884, and the other September 17th, 1884, one for $400 and the other for $250, and ask you if those two checks last mentioned were not given in settlement of the two checks of yours of August 26th and September 11th, 1884, and another $100 item which Mr. Mason owed you at the time.

A. These checks that are handed me were neither of them given to pay the $500 check. The check of $400 was given me by Mr. Mason to deposit with Lewis Johnson & Co. to meet a note that I had due that day, he having obtained money of me first on the 5th or 6th of September at my office and then having called on the 11th for more money, and when I told him that I had a note to
250 meet on the 15th and when I gave him this check he said he would help me with that note, and he paid this check to me for that purpose, and the amount of that check, to the best of my recollection, was returned to him on the 20th of September.

Q. These checks of September 15th and September 17th, 1884, one for $400 and the other for $250, bear your genuine endorsement?

A. Yes.

Q. Did you ever let Mr. Mason have money in your office without taking a receipt for it?

A. I did.

Q. You never let him have any money in payment of these five notes that I show you as such, did you?

A. It was understood that they were to pay them, and when they were paid I asked him where the notes were and he said they were in his office. The first money that Mr. Mason had, these first items, were to be applied upon those notes, and after the payments were completed I asked him about the notes and he said they were in his office, locked up in the safe.

Q. The first money you gave him out of this business was to apply on those notes?

A. He came in on the 5th or 6th of September and wanted some money. I happened to have some money, having received some money orders and $120 in registered letters sent me, and I gave him, to the best of my recollection, $500 without taking anything for it, and on the 11th he came for some more money and I said I had a heavy note to pay of $1,000, and I gave him that check with the understanding that he would help me about that note, and he did help me about that, and then on the 20th of September, my recollection is, I gave him back the money he helped me pay this note with, so that in fact he owes me $250 on that transaction.

Mr. SPALDING: I have this to state: that in the month of September I had no less than three definite transactions with him, and

when this account was brought up I only had a record of this one check that was paid, and I fully investigated the whole matter to determine the facts about it, and I found them to be that he came there on the 5th or 6th of September for money and I happened to have this $500 in my office (an unusual thing with me) and I gave him, I think, the whole of it with the exception of a few dollars I kept; I got $521 that day. He came very soon for more money and I gave him this check and relied upon his helping me pay the note a few days afterwards, which he did. It was merely a temporary help that I asked of him, and on the 20th of September I took $400 out of Riggs' bank; I think he went over with me and took it on a check to return that $400 that he gave me to help me pay this note at Lewis Johnson & Co. I had forgotten about these checks and did not know that they were to be presented here at all. I knew that out of the first money that I got in the first payments that Mr. Mason had nearly enough to pay those notes, $800.

251 GEORGE MASON sworn and examined—

By Mr. COLE:

Q. Mr. Mason, have you any book of accounts containing these transactions between you and Mr. Spalding or any part of them?

A. I have a book of accounts that contains a part of the transactions.

Q. Have you any book containing a cash account or record of cash that you received from all sources and what you did with it?

A. I have not.

Q. Well, is that book of accounts, containing, as you say, part of the transactions between you and Mr. Spalding, where you can get your hands on it?

A. Yes, sir.

Q. Have you it here today?

A. No, sir; but I have it where I can get it.

By Mr. SPALDING:

Q. Mr. Mason, are you in the habit of paying out money without taking receipts for it?

A. No, sir.

Q. Have you receipts for the money that you disbursed in the month of September, 1884?

A. No, sir.

Q. Are you in the habit of receiving money without taking any account from whom you receive it?

A. I frequently do. I usually kept distinct accounts in regard to distinct transactions. I have kept accounts in connection with my building transactions; have kept those accounts with vouchers, and when the transaction has been entirely closed I have not retained the accounts. I have some of the books. I have not retained the vouchers.

Q. What were you using money for in the month of September, 1884?

(Question objected to, and objection sustained.)

Q. You have your bank book and check book?

A. I have neither my bank books nor my check books, but the bank accounts are kept by the bank, and they can be brought into court by subpœna to the banks.

By Mr. COLE:

Q. What has become of your check books and your bank books?

A. In those cases where my transactions have been closed up I have destroyed the papers.

Mr. SPALDING: Mr. Auditor, I file an account here today in view of these checks having been produced, which I have called a statement of temporary loan account in September, 1884, with George Mason, charging him with money not included in the other account and crediting him with the checks.

252 (After discussion, it was agreed between the respective parties that the defendant is to produce book No. 1 on next Monday.)

Hearing adjourned until Monday, April 22, 1889, at 2 o'clock p. m.

253 MASON *vs.* SPALDING.

MONDAY, *April 22nd*, 1889—2 o'clock p. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, for the complainant, and the defendant in person.

GEORGE MASON examined—

By Mr. COLE:

Q. Mr. Mason, state in your own way and fully in relation to the open account of money transactions between yourself and the defendant.

A. Prior to May 19th, 1885, there had been some transactions. In 1883 Mr. Spalding came and wanted to borrow money of me. I had previously to that time let him have money without keeping any account of it. On November 21st I loaned him $250 and took his receipt or note for it; that was put in evidence. I do not know that it was, either. There is no question about that, however. I gave a check for it and took his receipt for that $250. On December 15th I again loaned him $250 and took his note for it. On March 29th, on May 31st, and on April 8th, 1884, I loaned him $100 on each date, making $800 in all. At the time of loaning him this money he was expecting returns very soon from the proceeds of his claims. That, however, was delayed, and there were other transactions between him and myself about which I am unable to state

distinctly, but I am confident that everything was settled from that date as we went along or almost immediately afterwards down to the 19th of May, 1885, when receipts were being had by him from the claims, and I asked him for money. On that date he let me have $250—a check for $250 on Lew. Johnson & Co.; that was the first money that I received on account of my interest in the claims, and I immediately went home and entered that on my book, expecting it to be followed up by other sums of money on the same account.

Q. Have you the book here?

A. I have the book here with the entry made on that date. I at the same time entered on the book these five notes that I have before referred to. After that the next money that I received of him was when I went and asked him for another sum of money, and he excused himself, saying that he had his expenses to pay, but if I would get along until the next appropriation—this appropriation he said would all be used up in expenses, he had been so long without money that he was very much in debt that he had to pay—he excused himself from that, and said out of the next appropriation I should have my pay or my share. I told him
254 that I needed $300 at the time, and he said he could not let me have it. I asked him then to loan it to me and I would return it to him, and he did so. It was in 1886. In the course of a week or so afterwards I returned him $160. I was at considerable trouble to raise the money to return to him. After returning the $160, and a few days later, I went into his office and carried him 2 $20 bills, making $40; that made the $200. He asked me about it once or twice. He was going away to Long Branch, I think, to spend a week or so, and he finally went away. On his return I met him on F street, and he asked me about that $100 balance on that loan. He asked me in this way: "Do you want to return that $100 or shall I charge it to you on the account?" Well, I told him if it was satisfactory I would prefer that it would go on the account, and I went home and gave him credit for the $100 balance due on it.

Q. At what date?

A. It is entered on my book here. I think that was October 4th; but there was prior to that another check he gave me, which I entered here January 10, which should come subsequent to that, I believe. He gave me a check of $100, and on October 16th I went into his office and asked him for some money, and he was very reluctant about letting me have any, but he had a pile of checks or money orders or something on the table of letters that he had just opened, and he picked out of that $20, I think, and handed it to me and took my receipt for it.

Mr. SPALDING: What is the use of going on with that when it is all in there. That conforms exactly to the case.

A. Yes, $120; but the $40 was not in. You have not credited me with the two $20 notes I gave you. What I want to say here is that that $20 that you gave me at that time in small checks and vouchers—perhaps a dollar or two in money—and took a receipt

for it is the only money that I have any recollection of having received from you in your office not by check. I have no recollection of having received any money from Mr. Spalding without his having taken a receipt for the same. He usually paid me in checks, whatever he gave me. In regard to the account along late in 1886 and 1887 he let me have, there were 2 notes, one for $400 and the other for $300, discounted at the Second National bank. They were renewed two or three times. On one occasion I carried him the money to pay the note, and then the note was followed by another note, discounted. My impression is that those two notes were voluntarily paid by me, but I am not positive about that. Besides that there was one note of $800 which I had the benefit of which was ultimately paid by him, after one or two renewals and curtailments. There was never any settlement of the $800 of notes of his that I had, but after- he had paid me some sums of money amounting to something more, probably, than the notes amounted to or about that. I recollect at one time when he gave me a check or something he asked me where those notes were. I told him that they were at home, in my safe, and that was all that was ever said about the notes, to my recollection.

(Notes and checks referred to by witness offered in evidence and marked "Exhibits G. M. No. 1 to 10," inclusive.)

255 Q. These notes, amounting to $800, are the same that you claim as an offset to the $2,400 which the defendant claims to have paid you on account of the fees?

A. I think that 2 or 3 checks that I have—three or four checks—should go in addition to the notes as an offset to the same account.

By Mr. SPALDING:

Q. What checks are they?

A. Two checks—no; there is one item that you put in a subsequent account—that $250; that is proper; that $250 which was put in as a subsequent account is a proper charge. That is the money I received on the 19th of April (May) and of which I gave you credit on the book—that is, the first money and everything that I have dated prior to that should stand as an offset to what you have dated prior to that date—May 19th, 1885.

Q. Then I understand you to claim that all matters of loans and payments between you and Mr. Spalding prior to May 19th, 1885, were stated and settled?

A. Were stated and settled, except the $800 of notes; not stated, but were settled as we went along. If he let me have $500 at one time, a week later I would return it to him. There is a charge in the account of $500, which is a check on Riggs & Co., in one of his accounts.

Q. Charged as currency?

A. Well, but that is the third account that he has put in. I deny that I ever received that currency item. Taking the first account,

the charges, I believe, are all correct down to the $800 item, and that $800 item is correct, but the item of charge prior to $800 was November 3rd, note discounted, Mayse & Co.; the proceeds of that note went to take up a note in the Second National bank of his, but I am unable to state definitely about those notes in the Second National bank; one was $400 and the other $300. My impression is those notes were paid by me, either the proceeds when they were first discounted or finally, but I am not positive about that.

Q. You mean the proceeds of the notes went to you or to Mr. Spalding?

A. Went to Mr. Spalding. They were carried along some time before they were settled.

Q. Is that the only item on here you controvert?

A. Those two items are the only notes there is any question about.

Q. You say the notes in the Second National bank. Do you mean all these notes?

A. No; the $400 note and $300 note. The $800 note was paid by him. They are the only two items I have any doubt about.

Q. This item here under date of November 3rd, 1886, $300, less $200 repaid. That is the transaction you have heretofore testified about?

A. No, sir; the transaction I have testified about is his first
256 charge there. He has charged me with $140. I say I not only paid the $160, but subsequently $40 more, making $200, so that should be $100 instead of $140.

Q. Taking up the second schedule, what have you to say about that?

A. The second schedule he has the item of a check of August 16th, 1884, on Lewis Johnson & Co., $50, and September 1st, 1884, on Lewis Johnson & Co., $500.

Mr. SPALDING: I want to correct that. That should be September 11th.

A. Very well. Those two charges are offset by two checks I have to his order and endorsed by him of September 15th and September 17th, one for $400 and the other for $250.

(These checks are offered in evidence and marked "Exhibit G. M. No. 11" and "Exhibit G. M. No. 12.")

Q. Here is the last account. What have you to say in relation to the account filed April 20th, 1888, by the defendant?

A. I say in regard to the first item, September 5th, 1884, which he says was money handed to me in his office, that I don't think he ever handed me $500 in his office in currency in the world. I do not think that I ever had that money.

Q. Well, what about the other items?

A. The other items, the credit of the $400 and the $250, that is the two checks I have just put in. He has credited me $400 and $250, those two checks. That is correct. In regard to the item of September 20, 1884, I know nothing about it.

Q. The items contained in this account are embraced among

those temporary transactions which were settled one at a time about the time or soon after the time when the transactions were had?

A. Yes.

By Mr. SPALDING:

Q. Don't you remember being in my office at the time I received $100 in money orders from that man at Key West?

A. No, sir.

Q. Don't you remember that I stated to you that I had received that from that one man and explained to you about the gratuity that he agreed to give me?

A. No, sir; you never explained that to me.

Q. Don't you remember with reference to this check of November 27th that that was the part of the note of $400 that you got discounted on the 23rd of November and took the money and returned the $300 to me by that check of November 27th, 1886?

A. A part of what note?

Q. The note that I have charged there at $100 to you for.

A. Which one is that? Will you pick it out and show it to me?

A. Yes.

Mr. SPALDING: I want to correct the description of this note in the account, November 23rd. I have stated this note as
257 $300, less $200 repaid. The true description of the note is note for $400, less $300 repaid. The item I am referring to is the last item on the account filed March 12, 1889.

A. I do remember this much, that there was a transaction of that kind in which there was a balance to be credited to Mr. Spalding of $100, but I cannot give the date or the circumstances of it, and I suppose it was one of these $100 that I had credited on my book. That was one of the Second National bank notes, $400, which you have charged as of August 17th, 1886. It was renewed and was not paid until some subsequent time, and from this I should say if you had $300 of it and charged $100 that the $400 should not appear in the account at all, and that would correspond with my recollection.

Q. $100 appears there and only $100.

A. Here is a note of $400.

Q. But that is another transaction altogether.

A. There were not two $400 notes at the same time there in the bank.

Q. I asked you about this particular transaction. There is the $400 note you have in your hand. The record I made of it at the time was that I had $300 and you $100.

A. I presume that is correct.

Q. And the note itself shows that you got the whole of the money.

A. I got the whole of it, but gave you $300 of it.

Q. Yes; the account is correct as it stands as I have rendered it, whereas you seek to obtain a credit for this $300 check in addition to what I have given you.

A. I have not charged that check at all. That is a check that

was produced for identification and has not been put in evidence at all.

(By consent the note of $400 of November 23rd, 1886, as well as the check of George Mason to the defendant for $300 are offered in evidence and marked "Exhibit G. M. No. 13" and "Exhibit G. M. No. 14.")

Q. If there are any of the items charged in my account filed March 12th, 1889, of money paid to you that are wrong designate them.

A. I will designate the first item. The balance on that item should be $100 instead of $140. There are no others on that account.

Mr. HARVEY SPALDING, being sworn in his own behalf, states:

Mr. Mason and myself in August and September, 1884, had several transactions about money. The first transaction was that of paying him $50 by check that is in this account on Lewis Johnson & Co. The next transaction was on the 5th of September, 1886. I remember distinctly his coming into the office and representing that he was in pressing need of quite a large sum of money. I had then begun collecting the first fees I ever collected on the Post Office claims. On the day he was in the office I received $400 from one man at Key West in money orders, and I received about $130 in registered letters besides the $400. I talked with Mr. Mason about the particular and exceptional case and circumstances of the $400 fee. It was in the case of a Key West man who agreed to give me a gratuity of $200 because I had collected $1,200, when he didn't expect but a hundred or two dollars. I let Mr. Mason have $500 in the office. I was keeping two bank accounts at the time, one with Riggs and Co. and one with Lewis Johnson & Co. I never deposited a dollar of that money in either of the banks and never paid any out, but I paid it to Mr. Mason. Mr. Mason came in the office again in a few days and wanted more money, and having just paid him this money and having a note to meet on the 15th of September of a thousand dollars at Lewis Johnson & Co. I was reluctant to let him have any more money. He urged that he wanted money badly and would help me over with the paying the note, and I then gave him a check that is in this account for $500. Mr. Mason on the 15th did help me, as he agreed to when I let him have that $500, and gave me a check for $400 to help me meet the note at Johnson & Co.'s. I deposited that check with Johnson & Co. -or that purpose. Two days afterwards he gave me a check of $250 in part repayment of the money I gave him on the 5th of August, because I had stated to him that I could not spare so much money out of the business, having so many demands to meet. On the 20th of September I returned to him the $400 by a bearer check on Riggs & Co., which I will offer in evidence. The money and proceeds of that check went to Mr. Mason to return the $400 he loaned me temporarily on the 15th. This is the check with which I returned the $400 which he loaned me to help me to pay my note. To the best

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Sept.

of my recollection those transactions constituted all the money transactions with Mr. Mason until he came to my office when the second appropriation had been made for more money. That was on the 19th of May, 1885. Having paid the notes out of the first appropriation, I asked Mr. Mason where they were. He said they were in his safe, locked up. On that day I gave him the check of $250, and all the other payments that are stated in this account are correct charges made in the first account that I made. I always remember the fact of the two payments, first payments, but I was embarrassed when I came to find that I hadn't but the one check of $500, dated the 11th, and I had to examine all of my papers and accounts in order to find out exactly how that payment was made, and I found by my records, by my bank books, that the first payment made in September was made in currency out of the proceeds of that big payment that I happened to receive on the day he was in the office. There never had in any transaction that occurred between Mr. Mason and myself prior to May 19th, 1886, the several transactions that he refers to, hadn't been settled in any way, with the single exception of the temporary loan of $400 that he made to me. The first appropriation was on the 19th of May, 1885. There had been no settlement of anything. The transactions occurred precisely as I have stated. Mr. Mason at that time represented that he was engaged in business in which he had to use these considerable large sums of money; but he said he would receive some large payments, so that he could help me out with the payment of my September 15th note.

($400 check referred to is offered in evidence and marked "Exhibit H. S. No. 1.")

Cross-examination.

259 By Mr. COLE:

Q. What is the date of the first appropriatien, or rather when did you first commence the receipt of fees from it?

A. In August I commenced receiving them.

Q. 1886?

A. No; 1884.

Q. Did you keep an account of these matters with Mr. Mason on any books of yours?

A. No. I had to rely upon the records of my office.

Q. You have no account at all?

A. I have no regular formal account except what is made up from checks and the records of my office.

Q. I mean to say, you didn't open any book account with him, entering debit and credit?

A. No, sir.

Q. When you paid him the $500 in currency in your office did you take any receipt for it?

A. No; he wanted the money right then.

Q. Take any sort of evidence for the payment of the $500?

A. No.

Q. Just handed it over to him?

A. Handed him over $500. Mr. Mason and I had frequent transactions of that kind years before. I would loan him money in large sums and I never remember but in one instance of taking a due bill; took a due bill from him once. He made it for me, but they were generally temporary loans.

Q. What date was that?

A. What?

Q. That payment of $500.

A. The 5th of September or the 6th. I think it was the 5th.

Q. 1884?

A. Yes.

Q. How did you pay the $400 charged subsequently, the same month?

A. Paid it by a bearer check. I think Mr. Mason was there in the bank at the time, and I made the check in the bank and he took the money on the 20th of September.

Q. You didn't make the check payable to him?

A. No.

Q. Did you take any receipt?

A. No; I gave him no receipt for the $400.

Q. But you were paying him this $400, you say?

A. Yes, sir.

Q. Paying it to him by check upon your bank?

A. Yes.

Q. And still you made the check payable to yourself?

A. Made it to bearer.

Q. Yourself or bearer?

A. Yes, sir.

Q. Are you accustomed to do your business in that way, when you pay money to a person on account to make the check payable to yourself?

A. Yes; I have done so frequently.

Q. Who was present when you paid that to him?

260 A. The cashier and paying teller.

Q. Do you remember distinctly it was in the bank?

A. I remember I paid the money to him and returned his $400.

Q. You say it was in the bank?

A. I think it was in the bank.

Q. And on the day the check bears date?

A. Yes.

Q. Did you go to the bank together or did you happen to meet him there?

A. I am not certain. I think he came to the office and we went up to the bank together and he took the money. I think I went up there with him and got the money on the check, and I think the check is made in that way.

The complainant having produced the book containing statement of his account with the defendant and desiring to retain the book in his possession, it is agreed that the stenographer may make a copy of

the account to file with the testimony, the book to be produced at the hearing if desired.

261 HARVEY SPALDING.

DR.

1883.			
Nov.	21.	To cash, c'k & rec'pt	$250 00
Dec.	15.	" " " and note, 10% int.....	250 00
1884.			
March	29.	" " " " " 7%.....	100 00
May	31.	" " " " " 6%.....	100 00

Contra.

CR.

1885.			
May	10.	By c'k, L. J. & Co....	$250 00
1886.			
June	10.	By cash, bal.....	100 00
Oct.	4.	" " "	100 00
Oct.	16.	" "	20 00
Oct.	19.	" c'k, 2nd Nat'l.....	100 00
Dec.	14.	" " " "	100
Dec.	29.	" " " "	100 00
1887.			
June	4.	" " " "	100 00
Feb'y	2.	By note, 3 mos.	800 00

262 MASON *vs.* SPALDING.

WEDNESDAY, *May 8th*, 1889—2 o'clock p. m.

Hearing pursuant to notice.

Present: Mr. Cole, for the complainant, and Mr. Phillips, for the defendant.

The examination of HARVEY SPALDING resumed—

By Mr. COLE:

Mr. SPALDING: Mr. Cole, I want to make a little explanation of my testimony.

Mr. COLE: Your testimony taken at the last session?

Mr. SPALDING: Yes. I was requested to present an account of money that I had paid Mr. Mason on account of fees that I had collected, which were involved in this controversy, and I did present such an account in which the first item was a check of $300 paid to Mr. Mason of June 10th, 1885, part of which was returned to me. That is the first item in that account. Subsequently Mr. Mason presented an account against me for certain notes, and I brought in

payments on account of those notes, and in that account the first item was a check of May 19th, 1885, for $250, I believe. I can't find the account here. When I presented that account I recollected that at the time I paid that check to Mr. Mason that either that check completed the payment of the principal of the several notes, amounting to $800, or that that principal had been previously paid, but I was not certain at the time I made the account. Subsequent to that I made a complete and exhaustive examination of all my papers and accounts, and I am now perfectly satisfied that the principal of the notes had been paid previously to the check of May 19th, 1885, and that that check of May 19th, 1885, should go into the account I first presented, adding to the total of the $2,460 of payments on account of these fees the sum of $250 less such amount of accumulated interest as may appear upon the notes. I had, in fact, paid $800 previous to that check, and that is the amount of the principal.

Mr. DARLINGTON, acting auditor: You say the check was for $300 and you received part of it back?

A. The first check for money paid to Mr. Mason on account was a check of $300, of which $160 had been repaid, and I charged Mr. Mason in that account $140. Subsequent to that he has testified that he believes he paid me an additional $40 on that check which I have no recollection of, but in my account it is stated that check is $140, while now that account should have opened with
263 the check of May 19th, 1885, of $250.

By Mr. COLE:

Q. I wish you would turn to the page of the book, Mr. Spalding, in which this gratuity, as you term it, of $207.48 appears.

A. Does it give the number of the claim there?

Q. The number of the claim is given as 537, but I think the number there is 637 (handing witness a book).

A. It is 453, the number of the collection.

Q. How?

A. The number of the collection is 453.

Q. You have found it?

A. Yes.

Q. I desire to offer that book in evidence, and especially the entry in relation to the fee. Will you please read the full entry?

A. "Key West, Florida, George Phillips, July 1st, 1866, to June 30, 1868; amount of collection, $1,204.10; amount of fee, $301.02." Then on the margin is entered this: "September 5th, 1884, $400 paid; September 1st, 1885, $108.50," and along in remarks is a note in some one's handwriting which I do not recognize, "Fee, $500," and this remark in red ink which I directed to be put in: "The amount of the fee in this case was $301.02, and the amount in excess of this fee paid me was a gratuity in view of the extraordinary large allowance obtained;" but the original entry of the fee is correct; it was $301.02.

Q. Are not the words and figures "Fee, $500," in the same hand-

writing as the balance of the entries in this case, except the red-ink memorandum?

A. They are not; it is in a different handwriting from any of the entries.

Q. In whose handwriting is the words "September 1st, 1885, $108.50"?

A. That seems to be in the handwriting of Mollie Deasu, one of my clerks.

Q. In whose handwriting is the entry "September 5th, 1884, $400"?

A. It seems to be in the same handwriting.

Q. In whose handwriting are the words and figures "Fee, $500"?

A. I can't tell; I do not recognize it. It is not in the same handwriting.

Q. Is this the first time your attention was ever called to it?

A. No; I have noticed it, but never to make inquiry in regard to that.

Q. The red-ink memorandum is as follows: "The amount of the fee in this case was $301.02, and the amount in excess of the fee paid me was a gratuity in view of the extraordinarily large allowance obtained." In whose handwriting is that memorandum?

A. It is in the handwriting of Miss Calvert, one of my clerks.

Q. You say that was made by your direction?

A. I directed it to be made.

264 Q. When?

A. I directed it to be made when the book was required to be brought into this court for the purpose of exhibiting all the facts.

Q. That was after the books were called for on my motion here before the auditor, was it?

A. Whenever it was I don't remember.

Q. What is the amount that was allowed and paid to the claimant in this case?

A. $1,204.10.

Q. When was that paid to him?

A. The fee was received of $400 on the 5th of September, 1884, and that immediately followed the payment. The other item there he gave me a note for, saying that he was willing to make me a gratuity. He gave me a note, but it was not paid until the next year, and then he did pay it.

Q. You say that the $1,204.10 was sent to the claimant shortly prior to September 5th, 1884?

A. Yes.

Q. How was the $400 paid you?

A. In money orders that I paid Mr. Mason that day, as I testified; $400 in money orders sent me the 5th of September and handed over to Mr. Mason.

Q. What do you mean by money orders?

A. Money orders—post-office money orders.

Q. Transmitted to you by mail?

A. Yes.

Q. Was there a letter accompanying it?

A. It may be; I think there was.

Q. Have you that letter?

A. Not here; it may be in my office, and in the jacket, probably.

Q. You probably have the letter at your office?

A. Very likely, in the jacket.

Q. Will you produce that letter?

A. Oh, certainly; will be glad to.

Q. How was the payment of $108.50 made to you September 1st, 1885?

A. He sent me as a part of the gratuity then this note, and I sent that note down to the bank near him about the time of maturity, and he paid it.

Q. Did he send a letter at the time he sent you a note?

A. I can't say; I can bring the jacket along and you can see all he did send.

Q. Have you any recollection about it?

A. No definite recollection. I have some 20,000 of these people writing me, and I do not remember each specific letter.

Q. This seems to be a peculiar case, only one of the kind in the whole 20,000.

A. Yes; a very remarkable case that a man should get $1,200 when he didn't expect anything.

Q. Did he send you the note unsolicited?

A. Well, I cannot say about that; I suggested it to him that it was a very fine allowance, and if he felt disposed it would be all right, if he wanted to give me a gratuity, and he was very willing to do it.

265 Q. Who first suggested the gratuity, you or he?

A. Well, now, I am not going to state anything about that. I will bring the papers in here and testify about them if you want them. I have no independent recollection about that. Of course I know that he gave me a gratuity. He owed me $301 on the contract and he didn't owe me any more, and he gave me the rest as a gratuity without any obligation except his gratitude for having received so much money; his letter shows it.

Q. Don't you remember it as a fact, independent of the record that you have, whether you asked him for something in excess?

A. I made no claim upon him for anything but the fee. I had the fee, and probably I may have suggested something about a gratuity; very likely I did.

Q. Did you write up the note and send it to him to sign or did he prepare the note and send it to you?

A. I cannot say about that; most likely I did. It must be a mighty important thing you are after, Mr. Cole. I am testifying as to the facts.

Q. That is what I want you to testify to.

A. If you want any more facts about this case we will bring the jacket in next time, letter and all.

Q. All right; I will be glad to see them.

A. You won't find any mare's nest about them.

The ACTING AUDITOR: I would suggest that you simply answer the questions, Mr. Spalding.

Mr. SPALDING: All right; go ahead, Mr. Cole.

Q. Will you produce the letter that accompanied the note of $108.50?

A. I will produce the check and every paper relating to this man's claim that I have in the jacket or so far as I know that I ever received from him.

Q. If you have the letter, then you will produce it?

A. Of course, if it is preserved. It may have been lost, but I think not. I have all the letters in the jacket.

Q. Was not all of the money that you received in that case received on account of your services in obtaining the allowance and payment of that claim?

A. $207 was given to me as an absolute gratuity.

Q. Wasn't it all on account of your services rendered in the case?

A. $207 of that $500 was given to me as an absolute gratuity. You understand it?

Q. I ask you whether or not it was not all on account of your services rendered in the case.

A. I will simply answer that it was given to me as a gratuity in addition to my fee.

Q. Did you have any acquaintance with the gentleman other than by correspondence?

A. No; I never saw him.

Q. Did you ever have any other business relations or transactions with him?

A. I do not believe I ever had, Mr. Cole.

Q. Please turn to No. 1345 on this book, Register of Col-
266 lections No. 1. In the case No. 1345 you say in your answer to exceptions, "The fee has been already accounted for, but there was an error in the name then given." Please explain how the fee has been accounted for and in what name. You will find that on page 3 of that register.

A. Yes; you have given me the wrong number; collection No. 67.

Q. Well, I gave you the number as stated.

A. It is on the Mason list, 1345.

Q. I took it from your answer; I did not know there was any error in it.

A. That is a collection in favor of M. D. Tackett, who was postmaster at Greensburg, Indiana, and the fee $86.75. The is the claim numbered 1345 on the Mason list, *a* M. D. Tackett, Greensburg, Indiana; the fee collected there was $86.75.

Q. Haven't you on your collection register two claims, one James King, who received $388.93 and paid you a fee of $97.23, and also M. D. Tackett, who paid you a fee of $97.23? Don't those both appear upon your collection register?

A. If you will tell me where to look I will tell you. I don't

know where to look for James King on this list. The only way I can tell you definitely whether I made a collection for James King or not is to look at my index in my office, unless you will give me the number of it.

Q. In your statement of account you have returned as collected from James King——

A. What place?

Q. Greensburg; the name of the State does not appear—Greensburg, Indiana—$388.93, p. $97.23, and the number in the margin is 1344. Didn't you collect that fee?

A. In the case of Greensburg, Indiana, of James King? It is not on this register; if there has been any such fee collected it has been collected at a different time. I have got no such collection registered on this book.

Q. You have reported this collection as made September 26th, 1884, in your schedule?

A. Yes; it is easy enough. We have just explained there we had Mr. King's name on the Mason list, Greensburg, Indiana, and we had Mr. Tackett following it, and they erroneously wrote Mr. King's name on that list; ought to have been Tackett, and the correct statement is that I collected a fee of $96.75 from M. D. Tackett, who was postmaster at Greensburg, Indiana, for his services between July 1st, 1866, and July 15th, 1867.

Q. When was that collection made?

A. Just prior to September 26th, 1884; the fee was paid September 26th, 1884.

Q. Then, in fact, there was but one claimant?

A. There is but one claimant on this register, that is M. D. Tackett, at Greensburg, and but one collection made at that time. We had in hand the claim of James King, at the same place. If there is any collection made for James King it has been included in these returns I have made, not necessarily at that time. I cannot state absolutely whether I have collected the claim of James King without going back to my indexes and examine the records.

Q. But you say now that you did collect a claim for Tackett?

A. Certainly; said it a great many times, Mr. Cole.

267 Q. You also had a claim for James King, of the same place, but not covering the same period?

A. It is not likely that two men could have been in office at the same time.

Q. I am not arguing the matter with you. I am asking you a question.

A. The questions answers itself.

Q. How did you come to report a collection in the name of James King if you had no such claim?

A. Mr. Cole, you have been informed over and over that the way it came about was that Mr. King's name was on the Mason list immediately preceding the Tackett case, and the name of King was put in in that collection erroneously by the clerk, and we have informed you of that a great many times. Now, what do you want more about it?

Q. Have you informed us of it before today?

A. Yes; just as soon as we found it out.

Q. Now, will you refer to claim No. 533 on the register? These are the numbers of the original claims, I think. You will find it on page 105.

A. T. Tomlinson, Plainville, Connecticut. I have it here.

Q. Does it not appear from your register of collections that you have received $11.11 in that case?

A. It is so entered on the register. Yes; the facts of that case are these: That this man made a direct application and made a collection, and his claim was not all allowed, and he had a claim that they refused to allow under the law, and he gave me a power of attorney with reference to the disallowed claim, and this $11.11, as I remember it, was sent me as a retainer at the same time this entry was made with reference to the claim that he had collected. The amount of the collection was $111.16 and my fees are always 25 %, and in this case he gave me the sum of $11.11, which was considered as a retainer with reference to this disallowed part of his claim, and I have made a return accordingly. Still this entry is on the register, and I make this statement from my recollection of the records in my office.

Q. What is that party's name?

A. His name is E. T. Tomlinson.

Q. Did he have two separate claims or was the sum that was allowed a part of the claim?

A. My recollection is that he didn't send me his claim, but that he made an application and got on that an allowance and then wrote to me about it, and upon examination I represented to him that the larger part of his claim due under the law had not been allowed, and I am his attorney for the purpose of enforcing that part of his claim.

Q. He seems to have sent you just 10 per cent. that he realized?

A. Yes; and I think the condition was that he should send me that sum, $11.16, as a retainer with reference to this other matter.

Q. Well, did you or not have charge of his original claim in which the $111 was allowed?

A. I don't think I had anything at all to do with it, and that is the reason.

268 Q. I did not ask what you think. I am asking you as to matter of fact.

A. Now, it is useless, if you want facts about any of these 20,000 claims in my office, for my to speak without bringing the jackets here. I will cheerfully bring the jackets in and testify all about them. At best—I am now testifying to the best of my recollection of these facts from my records.

Q. Are not your books made up from records in your office?

A. The books are made up in exact accordance with facts.

Q. And as a matter of fact you entered upon your record that this $111.11 collection was made, and that you received a fee of $11.11?

A. Yes; I wanted to keep a record of the money I received, and

I wrote in there the amount received. If there is any case that you want any more information about I will bring the jackets in here. I decline to testify about them because I cannot testify as to these special facts without the jackets.

Q. Look at the book designated and heretofore referred to in this case as the Mason register, containing the list of about 7,500 names of claimants, and state whether or not the names of the claimants contained in your Schedule B filed with your answer to the exceptions in this case do not appear upon that list of names.

A. Well, the first one on this Schedule B is Thomas B. Wood, Franklin, Indiana, No. 1340½; it is on the list, having been interlined by some clerk who did not register the original claims. The same is true of the next one, Samuel K. Connor, No. 1501½, Cord, Indiana. The same is true of No. 1645½, H. M. Smith, of Enterprise, Iowa, interlined by some clerk long afterwards other than by the clerk who made the book. The same is true of the next one, 1688½, S. F. Stubbs, of Guthrie Center, Iowa. The same is true of the next one, J. H. Woodspeed, No. 1916½, of Winfield, Iowa.

Q. Is that true of the whole list?

A. That is true of all of them, I think. They were cases that were interlined a long time after that book was made for convenience and not on the original Mason list.

Q. Can you state when they were put on this book?

A. They were put on at different intervals, most likely after 1883; some of them might have been put on just prior to 1883, but my judgment is that nearly all were written in there after 1883.

Q. What was the reason for entering those names on this old register?

A. They were claims that were developed afterwards—after the register was made; the most of them were written in before I made other registers.

Q. Is see these names here, so far as I have noticed them, seem to have been erased or a line drawn through them with pen and ink.

A. They can all easily be read, notwithstanding the line.

Q. When was that erasure made?

269 A. I do not know. I presume that the pencil line was drawn through them by direction of the clerk in charge of making the returns, so that it might be as a direction of the clerk who made the schedules not to include them in the Mason list, because they did not belong there.

Q. They have been erased since the bill was filed and since you put in your answer in reference to this book?

A. I have no doubt my son gave that direction; he can state for himself. I have no doubt he gave directions to the clerk who made the schedules of these fees and for convenience marked them in that way, so the clerk understood that they were not to go into the schedule.

Q. Some of the names appear to be written between the lines and some of the names having the half numbers appear to be entered in regular order upon the ruled lines of the pages. How do you

account for this mode of entering? They do not seem to be interlineations, but original entries.

A. Well, there were spaces left in the original book between the letters, and where it happened that there was such a space as that and came in order they were written in in that way, but most of them are crowded in very narrow space between the original lines.

Hearing adjourned until Friday, May 10th, 1889, at 2 o'clock p. m.

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MASON
vs.
SPALDING.

MONDAY, *May 20th*, 1889—12 o'clock m.

Hearing pursuant to notice.

Present: Mr. Cole, for the complainant, and Mr. Phillips, for the defendant.

HARVEY SPALDING recalled.

By Mr. COLE:

Q. Have you now the letter of George Phillips in the Key West, Florida, case asked to be produced at the last session?

A. I have.

Q. Will you file with the auditor in this case that letter as part of your testimony?

A. Yes.

(The letter is here filed and marked "Exhibit H. S. No. —.")

Q. Have you a copy of your letter to Mr. Phillips of date July 14th, 1884, to which this letter now produced was a reply?

A. I have not a copy of that letter.

Q. Have you a copy of the reply to this letter?

A. I have what I believe to be a copy, but I am not absolutely certain, of a reply I made on the 28th of July, 1884.

Q. Is it not a letter-press copy?

A. It is not. It is a memorandum—rough draft of the letter that I think was sent him.

Q. Have you any recollection of the contents of that letter other than the memorandum which you now have?

A. I have a memorandum letter dated July 28th. It is in my handwriting—July 28th, 1884—and I believe that it is preserved as a copy of the letter that was sent to him of that date.

Q. Will you state what that memorandum is or file it with the auditor?

A.—

"WASHINGTON, D. C., *July 28th*, 1884.

George Phillips, Esq., Fort Taylor, Key West, Florida.

DEAR SIR: I have just received yours of the 23rd inst., proposing on receipt of draft, your order, for $1,204.10 to remit to me a postal

order of $400 and your note endorsed by your wife, payable one year from date, with interest at 10 per cent., $100. This proposition I accept with the full knowledge, of course, that your claim when I wrote about it had no real value, but you need the money and shall have it, less the cash, $400, now and the $100 one year
271 from date, though to accomplish these collections I have burdened myself with an outlay of more than $30,000. The case is extraordinary and peculiar, but the adjustment is deliberately made by the Postmaster General under authority of Congress, the act I secured. There have been corrections of some adjustments since they were made, but I feel sure I can have your draft sent to you in a very short time. None have yet been issued and some time has been wasted in preparing papers, etc., and I am after them every day to hurry them up. In the note please write the name of some bank most convenient to you at which at maturity it may be presented for payment.

Very respectfully, —— ——."

Q. Signed by yourself?

A. This paper is not signed. I presume I sent him a letter like that signed.

Q. Please look at page 10 of the register of claims to the claim of David Payne, Boyd Station, Iowa, and see if your register does not show the collection of a fee in this case of $37.58.

A. The book shows a collection of $37.58 and the jacket shows an expense of 65 cents to the bank. That expense is also noted on the book, but I do not know when it was noted.

Q. At page 21 the claim of Isaac Caldberry, Arcata, California. State if your register does not show the collection of a fee of $43.33.

A. Yes; the book shows a fee collected of $43.33 and the jacket shows an express charge out of it of a dollar.

Q. Look at page 38, claim of W. F. Johnson, Topsfield, Maine, and say if your book does not show the collection of a fee of $29.52.

A. The fee on that claim was $29.50, and it is noted on the book as $29.50 collected, when, in fact, $28.50 was collected, as shown by the jacket.

Q. Look at page 43, claim of J. R. Jones, North Attleboro', Mass., and see if the fee collected in that case was not $45.75.

A. There is an erroneous entry on there of $45.75 that was collected in that case, when, in fact, the fee collected was $20 only; $45.75 is the full fee and the amount actually collected on that was $20 only.

Q. How was that $20 collected?

A. The claimant sent me a letter dated May 11th, 1885, at North Attleboro', Mass., in which he says: "Yours received. Enclosed I send you $20 of the amount that I owe you for services in the so-called Spalding claims. I am sorry I could not remit the whole, but as I have been unfortunate in the past year I could not do it." It was sent me in a letter.

Q. Look at page 90, claim of L. Smith, Portville, N. Y. Was not the fee collected in that case $50?

A. That is a case we had a great amount of correspondence in and wrote numerous letters, and no part of the expenses has been noted in the account that has been rendered, but it was finally compromised by the payment of $50, and $5.25 out of that $50 was retained by Guy T. Lowry, so that I received $44.75 and no
272 more, without counting the great cost and expenses of the correspondence.

Q. Was Lowry your attorney?

A. Yes; he was a local attorney we had to employ. We wrote numerous *numerous* attorneys.

Q. Look at page 105, claim of R. T. Tomlinson, Plainville, Conn. State what fee the book shows to have been collected in that case.

A. I was not employed as the attorney for this man in the collection noted on the book, but he sent me a retainer, under date of May 23rd, after his allowance had been secured, of $11.11, for the purpose of employing me to collect a further claim for him. He says, in sending me that money, "I also enclose money order, amount $11.11, ten per cent. of amount $111.16, previously allowed me by the department and which you desired me to send as a retainer," for the other claim. He didn't employ me in this claim, but he did give me a retainer; that retainer I hold in reference to another claim.

Q. The allowance that he got was not all that he claimed?

A. No; this $11 is a retainer which I now hold for the prosecution of a further claim.

Q. Page 108, case of J. W. Stone, Belfry, Ohio. Does not the register show a collection of a fee of $100 in this case?

A. Yes; it shows that. There was $100 paid, but it was paid by an outlay of sending my son out there. There was an expense of that trip out. Well, the attorney my son employed there made this report, under date of February 25th, 1887: "When your son was here we talked the situation over in your case against J. M. Stone, and he authorized me to settle the claim and receipt in full on the payment of $100 by Stone, which I have finally succeeded in getting him to agree to. Today he paid me $80 of the amount; your son gave me $15 to cover costs if suit was brought; total due, $115 (including cost), less $10 fee to me." I, in fact, received $90, and that was subject to the costs of this trip of my son out there.

Q. Did he go specially in this case?

A. Oh, well, he had two or three others with it.

Q. How many others?

A. Well, two or three, I think. The fact is the attorney took $10 of the hundred and $25 was allowed for the proportion of my son's expenses out there on that trip.

Q. That would leave the fee, according to your estimate of it, what?

A. $65.

Q. How long was your son gone—how many days?

A. I think he was gone a week.

Q. Do you know what his expenses were in all?

A. I do not know; but there was a careful proportion fixed up as to the different cases he had; $25 is a fair part of the expenses that he incurred necessarily at that time to be charged to this particular case.

Q. When did you make up that apportionment; when you made these accounts or at the time of his going?

A. It was made at the proper time. I could not state definitely the particular time.

Q. Now, there are 4 cases here that do not appear on that
273 book, which your son and I examined upon the book that follows that. I will pass that. At page 4, H. C. Jenkins, Pineville, Indiana. Does not your book show the receipt of $2 in that case?

A. The book shows that this amount, $2, — sent me to defray postage expenses. The fee in that case never has been collected.

Q. This was sent on account of the claim being in your hands, was it not?

A. Yes; sent me. He thought I ought to have $2 to help me to pay postages—my big correspondence with these people. It is no part of the fee, except if he had paid the fee it would have been deducted on the fee, but the fee has never been paid in that case.

Q. I think you have testified in relation to these receipts of sums of money before, have you not?

A. I believe I had about $100 sent me, little driblets, at different times, and I made memorandums of them on the jackets.

Q. In the case of George Phillips; that has been examined. Look at page 21, the claim of W. W. Davis, Floris, Iowa, and state what you have received in that case.

A. That is one of Mr. Strong's cases. There was a fee of $1.25 paid, and I suppose that Mr. Strong paid me two-thirds of that $1.25.

Q. What was the allowance?

A. Yes; of $1.25.

Q. I say what was the allowance to the claimant?

A. $4.99 is the allowance.

Q. Look at page 18, claim of A. E. Hull, Agannon, Conn., and see if the fee allowed in that case was not $22.75.

A. Yes; the fee was $22.75 and the cost $2.25, paid out of it to get the rest, which was $20.50.

Q. What was that cost paid for?

A. Well, he refused to pay the fee and I employed an attorney, and the attorney took out of the $22.75 $2.25 and sent me $20.50.

Q. Look at page 72, W. H. Clark, Center Moriches, N. Y. Was not the fee in this case $4.49?

A. Yes; the fee was $4.49 in that case, but the claim was sent to me by an attorney by the name of Jennings, and he paid me $2.99 out of the $4.49.

Q. In the case of M. T. Tackette, Greensburg, Indiana, you have made a statement heretofore. Look at page 37, R. J. Gerry, South Robinson, Me., and say if the fee was collected in that case.

A. The fee appears to have been $4.15 and appears to have been

paid. Whether there is another attorney in that case I cannot state without looking further.

Hearing adjourned to Wednesday, May 23rd, 1889, at 10 o'clock a. m.

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MASON
vs.
SPALDING.

WEDNESDAY, *May 22nd*, 1889—10 o'clock a. m.

Hearing pursuant to adjournment.

Present: Mr. Cole, for the complainant, and Mr. Phillips, for the defendant.

HARVEY SPALDING recalled.

Examined by Mr. PHILLIPS:

Q. Mr. Spalding, I see among the papers in the case one entitled "summary statement of gross amount of fees collected on postmaster claims," in which there are the following items:

In 1884	$7,877 95
In 1885	26,705 77
In 1886–'7	45,658 08
In 1888–'9	85,000 00
Total	$165,241 00

Summary statement of money necessarily paid out in consequence of change of the law and department circulars from above-mentioned collections in order to effect such collections, namely:

Clerk hire	$15,608 24
Office rent	2,540 00
Postage	6,375 00
Stationery, printing, &c	5,959 18
Miscellaneous expenses	2,565 78
Total money paid out of said gross collections	$33,048 20

The net fees collected is therefore 80 % of the gross collections.

Q. Is that paper correct?
A. It is correct—made from my books and records.
Q. At what time was it made out?
A. About one year ago.

Mr. COLE: At this point I desire to enter an objection to the testimony in relation to the expense referred to by counsel in his examination as being irrelevant and improper and desire it understood that this objection shall apply to all testimony upon this point hereafter taken without specifically repeating it.

Q. Were these items taken from your books?

A. They are computations of the fees collected from the books and jackets in my office.

Q. I observe the item here of clerk hire, $15,608.24. Was
275 that clerk hire paid exclusively for the collection of these fees?

A. The $15,608.24 as clerk hire includes the whole clerk hire in my office for the year- 1887, 1888, and up to the present time in 1889, and the whole of that clerk hire has been paid to clerks for the collection of fees, that being the exclusive business in which they are engaged since January 1st, 1887. The residue of the amount is one-half of the clerk hire paid by me to clerks actively employed in my office between March 3rd, 1883, and January 1st, 1887, the other half of the clerk hire having been paid to clerks employed in obtained claims and not in the securing and providing for the securing of fees.

Q. The clerk hire paid since the 1st of January, 1887, is clerk hire for services in regard to the fees on the Mason list entirely?

A. Oh, no; the clerks have been employed to collect the Mason fees and to collect the other fees in my office, and the total amount of fees collected by the employment and payment of $15,608.24 to clerks amounts to $165,241.80, and this $165,241.80 includes the fees collected on the Mason list. It includes all fees there collected, and the Mason fees are included in them, and the clerk hire has been paid out for the whole.

Q These are—all these items with which you credit yourself on this slip of paper are items expended in the collection of all the fees upon your post-office business?

A. Each and every item is a proper and necessary charge and expense incurred in the collection of all the fees with the exception of the item of miscellaneous expenses, which is an estimate of expenses which have not been computed. That item of miscellaneous expenses I have stated here as $2,565.78, and I will state with reference to that that I have a large number of cases in which I have incurred extraordinary expenses as to which I have not yet been able to make up a statement and in various other ways connected with the business not included in either of the other items mentioned in this statement.

(It is agreed that Mr. Spalding may file with the papers a circular of transmittal of the Post Office Department, sent out by the Third Assistant Postmaster General, transmitting warrants in these cases.)

I will state further in regard to this account that before the first payments in 1884 and at the time of the first payments various circulars were issued by the Postmaster General and sent to the claimants by way of inducement to the claimants not to pay the fees, and it became necessary to expend a great amount of labor in order to collect the fees at all, and for that purpose I sent letter after letter and paper after paper to each of the clients in order to so far as possible make the payment of the fees secure. The labor

was continuous from the passage of the law and from the time of the issuance of those circulars throughout the whole period since, and in 1886 there was a special circular, which we call the "Vilas circular," issued to defeat the payment of the fees. This circular was received as an instruction by each of the clients to whom it was sent.

Q. That Vilas circular is the one you have just put in?

A. Yes; that was received as an instruction by each of
276 the men that the fee contracts were null and void and that I had rendered them no service. In consequence of that circular and the previous action of the department and of the direction contained in the act of 1883 to send the drafts to the claimants, it has been utterly impossible—it would have been utterly impossible to collect any considerable part of these fees without this outlay which I have incurred and which is as set forth in this memorandum.

(Complainant's counsel objects to the testimony of the witness as to any circular, the contents of it, or the inference which he draws as to the effect produced by the circular as being incompetent.)

(It is unserstood Mr. Spalding may file any circular to be submitted to Mr. Cole for identification.)

By Mr. COLE:

Q. Does the sum of $165,241.80 include all of the fees that you have collected on these postmaster claims?

A. It does with the exception of a nominal amount collected since the date that memorandum was made.

Q. How did you arrive at the amount?

A. They were computed from books and jackets and stated in our answer to the complaint in this case as to the amount collected in 1884 and 1885, and a considerable part of those collected in 1886 and 1887 and those collected in 1888 and 1889 I have kept upon a separate book and had the computation made from it to date, and that is taken from that record.

Q. Those collected in 1889 are estimated, I presume, to a certain extent?

A. No; no estimation about that. They are taken from the book itself, 1888 and 1889; up to the date at which this memorandum was made, they were transcribed from the record of the collections.

Q. And accurately footed?

A. Well, there was a few dollars over $85,000 in the gross sum, and there was also certain amounts that had been paid to banks, etc., but $85,000 is the sum amount of the fees that are collected on them of those taken from my book with that unimportant modification.

Q. Then it is an approximate amount of what was collected in 1888 and 1889?

A. It is the amount, with the exception, perhaps, of a few odd dollars at the date this statement was made.

Mr. COLE: Without intending to waive the objection to the testi-

mony of the witness in regard to the objections heretofore made by me, but insisting upon the same, yet in the event that such testimony should be regarded as competent and proper I will cross-examine the witness in relation to these items.

Q. I think you said that the expense account that you have made up and filed was made up from the books of your office, did you?

277 A. Well, I have kept memorandum books about the payment of clerks in a rough way from which this account is made and made accurately.

Q. How many books?

A. Oh, simply little memorandum books as to the payment of clerks and date of payments.

Q. No regular set of books?

A. Oh, no.

Q. Little pocket-books?

A. Little leather memorandum books sufficient for that purpose, and, of course, the office rent is a matter easily to be determined. The payment of the office rent has not been entered on the books, but I have receipts for the rent of the office.

Q. From March, 1883, to January 1st, 1887, how many clerks did you have in your employ?

A. Well, in order to give the exact number I should have to bring my memorandum book, which I haven't here. The figures that I have given is the amount that I paid the different clerks.

Q. How much did you pay for clerk hire between those dates?

A. Twice the amount stated here. I paid $15,000 in addition to that and I paid $900 to a clerk not actively employed in the office—that is, $75 a month; not $900 for that time, but $75 a month.

Q. How much is the gross amount of clerk hire paid by you from March, 1883, to January, 1887?

A. $3,428.

Q. And according to your idea what proportion of that is chargeable to the Mason claims?

A. Did you ask me from March 3, 1883? To what time?

Q. January 1st, 1887.

A. The statement I have just now given is for clerk hire I paid from March 3, 1883, to January 1st, 1884. I have stated it in sections.

Q. Well, continue and state it in sections down to January, 1887; then we will be able to ascertain the gross amount.

A. I paid for clerk hire in 1884, $4,409; clerk hire in 1885, I paid $4,454.75; clerk hire in 1886, I paid $5,493.25.

Q. That takes you to January 1st, 1887?

A. Yes, sir.

Q. The balance of the item of $15,608.24 is the entire clerk hire of your office since January 1st, 1887, is it?

A. Let me state that from these items I have just named there is deducted $900 a year that I paid to a clerk not actively employed in the office, and then of that remainder one-half is taken as the

amount of clerk hire actually employed in the collection of these fees; then the entire amount of clerk hire that I paid after January 1st, 1887, was paid for the collection of fees: that is the entire amount as I have stated it.

Q. That is that entire amount since January 1, 1887?

A. For the year 1887 it was $450.75; for the year 1888, $2,790, and for the year 1889 up to June 1st—I have so stated it here for convenience—$1,200.

278 Q. What proportion of that do you seek to charge up to the Mason claims?

A. The proportion of that chargeable to the Mason claims is in the proportion of $165,240.80, and there is chargeable to the fees on the Mason list, in exact proportion to the amount of the fees returned, the gross amount of fees returned as collected. The result of the whole is, to state it approximately, out of every dollar of fee that has been collected there has been 20 cents paid for expenses of collection.

Q. You say you kept no account of the rent. Do you make that up from your recollection or from your receipts?

A. Make it up from my receipts and the well-known monthly rent that I have paid for the offices.

Q. What period does that cover, the $2,540 item for rent?

A. It covers the entire time from March 3rd, 1883, to June 1st, 1889, and it includes one-half of the office rent paid by me since January 1st, 1887.

Q. Now, Mr. Spalding, in relation to this item of postage, $6,375. Did you keep an account of your expenditure?

A. No; I have to make that up and did make it up mainly from the amount of letters I sent, by the number of envelopes I purchased, and it is the best approximate statement that can be made.

Q. Did you keep an account of the envelopes you purchased?

A. I made up when I first made up my estimate of postages a statement from the bills of envelopes from the number I purchased, and when I came this morning I searched for that memorandum and could not find it. I had such a statement made up, and in order to make another statement it will be necessary to re-examine all the bills.

Q. How many envelopes did you purchase, gross?

A. I shall have to go over the bills to answer that question.

Q. But you say you did go over the bills for that purpose?

A. Yes; I did go over it, and I made the statement of the postage in that way, and the statement of the postage which I had expended is incorporated in the pleadings as to the larger part of this time, and I made it up in that way at that time.

Q. You had to rely entirely upon ascertaining the number of envelopes you had used; you had no other account?

A. I had no account. I had to make it up. We spent an enormous amount of money for postage and didn't keep an accurate account of it; that is the fact of it, and had to determine that by the envelopes I purchased.

Q. And what period of time does that purchase of envelopes cover?

A. The same period of time for which the postage is charged.

Q. The charge specifies no date at all?

A. Oh, well, then, let me specify more particularly. That gross statement there in this bill includes $750 for the time between March 3rd, 1883, and December 31st, 1883, $1,000 for the year 1884, $1,000 for the year 1885, $1,500 for the year 1886, $750—
279 and, by the way, these several sums I have stated are one-half of the gross amount of postage for those years prior to January 1st, 1887; it includes $750 for the year 1887, $1,000 for the year 1888, and $375 for five months of the year 1889, and these were intended to cover the whole amount of postage paid by me within that time, because that has been the business we have been engaged in—collecting these fees.

Q. Have you bills for the stationery and printing which you have charged here, amounting to $5,959.18?

A. I haven't them here. I have made the statement as to the gross amount of such expenses in the pleadings and made them up at the time the best I could from bills I had in the office, and I have taken that statement made in the pleadings and made up this item in the same way as before, taking half of the amount of such expenses between March 3, 1883, and January 1st, 1887, and the whole amount since January 1st, 1887; of course some of the more recent items of this account, I believe I have in terms stated that they were approximation estimates. I have not, in fact, made a close figure. They are estimates for 1888. I have roughly estimated the stationery and printing at $500 for five months of 1889. I have roughly estimated it at $200 and I will gather up the bills and make a more explicit showing as to those. In 1887 I think that statement was taken from the figures that I made at the time of answering the plaintiff's bill as well as the items prior thereto.

Q. You kept no account of the matter upon your books?

A. No.

Q. You have to rely entirely upon such memoranda or bills as you have been enabled to find about your office?

A. Yes, sir; and no doubt many of them have been overlooked.

Q. Then these items of expense are made up from your best recollection after hunting up bills and examining such entries as you have been able to find in your office?

A. Well, I believe I have not trusted my recollection at all. I have referred to the data and made the account from the best data I had.

Q. But according to your own account you haven't much data from which to make it?

A. Well, I have the major part of the bills for the stationery and for the printing in my office.

Q. From whom did you purchase the stationery?

A. I purchased a good many thousand dollars' — from J. C. Parker.

Q. Of this city?

A. Yes; I have purchased a great many envelopes from Mr Morrison and from Miss Pracka and I have two or three other con cerns. I have purchased them sometimes 50 and 100 thousand a a time, envelopes, and of course paper necessary to carry on the correspondence involving such an outlay of postage has been pur chased of Parker and Morrison and Pracka.

Q. Who has done your printing?

A. Different parties. Mr. McGill has done a great amount o printing for me, and recently McQueen & Wallace.

280 Q. What printing did you have done in connection with the collection of fees?

A. Well, I had circulars printed in reference to the contracts and in reference to these circulars issued by the department, and I had guaranty contracts printed and sent them out by the hundreds of thousands in order to get some guaranty from other parties than claimant that the fee would be paid; sent them one following the other, sometimes 20 and 50 to the same person—no end to the amount of printing I had done for that purpose.

Q. Why did you send 20, or 50, perhaps, of the same circular to the same person?

A. Because they would not answer, and I found that was the only practicable way to get them to answer to effect anything. I gener- ally sent these printed forms for guarantees intended to secure the fees with every circular on the subject, and then we wrote letters, typewritten letters, one after the other; then after an allowance was made we had printed slips made, designed for the person to whom the allowance was made to sign, stating that he would pay the fee at a *a* bank or by sending registered letter or by sending money orders, and those were sent out in the same way, sometimes 20 to the same person before we could get any answer. Then when the draft was sent we had other printed letters to send and other printed circulars. There has been in almost every one of these cases, so to speak, a continu- ous stream of letters and printed papers sent to them in order to secure these fees, and we have had our whole force of clerks engaged in that business.

Q. The item of $2,565.78 of miscellaneous expenses, how did you make that up, Mr. Spalding?

A. That is the roughest kind of estimate. There have been trips made to different places and money sent to attorneys all over the country to collect these fees, and there have been very many mis- cellaneous expenses incurred that were impossible to get without a good deal of labor and trouble, and I put that in the roughest kind of estimate to cover all such cost, hoping to bring more specific statements in here.

Q. That includes, then, travelling expenses?

A. Yes; and money paid to lawyers.

Q. Expenses incurred for collecting through the banks?

A. No; it don't include that; those are deducted from the collec- tions at the time.

Q. Did you keep any account of those expenditures?

A. No.

Q. Made them up, the same as you did the others, from your recollection?

A. I haven't made up anything from my best recollection. I put this in as a rough estimate of expenses not specified, and I will prepare a detailed statement, so far as it is possible to be prepared, of these miscellaneous expenses.

Q. Now, since March, 1883, has your entire business been the prosecution of these claims—nothing else?

281 A. I have had a very small amount of business outside of these claims, but not enough to keep myself employed.

Q. Have you no other business now and have you not had since January 1st, 1887?

A. Well, office business you mean? Of course I have been building some houses. My clerks have not been employed about that nor my office has not been employed for that purpose.

Q. But as an attorney, a claim agent, or whatever you may term yourself or your business, have you had no other business than the collection of these claims?

A. These claims constitute, so to speak, my whole business. Without this business I should have no occasion for an office nor for the employment of a clerk, but I have had some small number of miscellaneous cases, a few pension claims and some few miscellaneous matters coming into my hands, but not sufficient to give myself constant employment, and I have myself been in the office constantly.

Q. How many clerks have you in your employ now?

A. I have 6, and until within a few days ago seven. One was discharged or left about a week ago.

Q. What salaries do you pay them?

A. I pay one $50, two $75, one $30, and one $12.

Q. Per month?

A. Yes.

By Mr. PHILLIPS:

Q. Mr. Spalding, you said in the item of miscellaneous expenses are included fees paid lawyers in the course of collecting these claims, collecting claims in which you were successful. Does it include fees paid to lawyers w-ere you collected the fee?

A. No; I made outlays to collect claims in which I have failed to make collections, a large number of cases. The cases where collections have been made the expenses to the lawyers have been deducted, accounted for there, but I think there are some of the cases in which collections have been made where there have been other expenses in travelling, etc., which are not included, and I am not certain about that. In order to get at that thing definitely we have got to carefully examine the jackets and correspondence, and it is a long job.

Q. Well, the travelling expenses in the miscellaneous expenses, were they travelling expenses in the case of collections that were successful?

A. No; in cases that were not successful.

Q. I understand that no part of this item of miscellaneous expenses includes expenses in cases where you succeeded in collecting the fee.

A. Oh, I think there are expenses that are not covered by this item that are properly chargeable against, to some extent, cases in which collections have been made.

Q. Some part of the expenses?

A. In such a business as that there is a vast variety of outlays that cannot be enumerated in a minute. The great part of them, of course, are included under those regular heads.

282 By Mr. COLE:

Q. I will ask you if you can specify any one of the Mason cases in which travelling expenses or attorneys' fees have been paid.

A. You mean that is not brought in here?

The question is repeated.

Q. The unsuccessful cases.

A. Yes. There is one up at Mauch Chunk. An attorney called on me to go up there as a witness. It was quite a large fee. He said we would probably fail before a jury if I did not go. I paid my trip, $50, paid the attorney $25, and then didn't get a cent.

Q. What case was that—who was the party?

A. Her name was Sarah Ohl and the name of the post office Mount Pleasant. It was quite a volume of such things that ought to be brought in here, but of course I haven't, and that is the reason I put that miscellaneous item in there.

Q. But in making up this statement of expenses you have not selected any of the Mason cases particularly, but have made up a general account of your expenses in relation to all of the cases that you were prosecuting and want to charge a proportionate part of those general expenses to the Mason claims? That is your theory, isn't it?

A. The only way I know how to determine the amount of costs of collecting these fees which have been paid out of the fees is to take the whole of the fees, covering something like twice as many other fees as are included on the Mason list. The business has been conducted as one business and the clerks have been hired and the postage has been paid and all that, but in reference to these miscellaneous expenses, for instance, I have stated that as I have everything else as to the whole business and if this item of $2,565.78 was actually incurred as miscellaneous expenses not enumerated, it would be something like one-third of that that would be chargeable to the Mason cases.

Q. But you cannot say as a matter of fact whether it would be just to charge a third or any specific amount or proportion of these expenses against the Mason cases even upon your theory of adjusting these expenses?

A. Such of the miscellaneous expenses as are general and relate to the Mason cases and the others combined, of course, should be charged in proportion. Such of the miscellaneous cases as were

specifically made with reference to the Mason cases should be charged altogether to them, and this Ohl case is one of this, in which I spent $75 or $100 in one case.

Q. Does any other case occur to you?

A. There are several such cases. I cannot recall them. I cannot recall them among so many.

Q. And those expenses of $2,565.78 is of that class of expenses where fees have not been collected, but you claim to have expended money on account of your efforts to collect the fees?

A. That is not a correct statement of the case. There are certain expenses incurred in collecting these fees which might be included under the head of miscellaneous expenses which are not in-
283 cluded under either of the other items that it is some labor and trouble to ascertain and specify, and then there are included in that same head such expenses as I just now named of money paid to attorneys and other expenses in an attempt to collect fees, which we failed to collect.

Q. Mr. Spalding, I would like to know how you made up that item—just how you arrive at that amount.

A. I have stated it is the roughest kind of an estimate.

Q. Of what?

A. Under which I propose to make more specific showing. It is a rough estimate of miscellaneous expenses not included in these items.

Q. Can you state what those miscellaneous expenses are?

A. I am going to make up now a statement of such of them as I can specify in particular and will bring them along down here.

Q. How did you arrive at this sum? You have given a specific sum. You had some method of arriving at that.

A. Yes; my original idea and my acquaintance with the business from the time that we have been put to these extraordinary expenses to collect these fees would amount to about 20 per cent., and I went carefully over the whole thing and made these items here. The clerk item, of course, is an item of record and the office rent is a matter of record, and the postage is matter of approximate determination by the number of letters I have sent out, and the stationery and printing is a very well authenticated thing from bills which I made up originally in this reply and which I adopted here in this statement, and then the other item of $2,565.78 is a mere rough estimate, under which may be classes other items not included there.

Q. And which you cannot specify?

A. Which in part I can specify with sufficient time to go over all my papers.

Hearing adjourned to Wednesday, May 29, 1889, at 2 o'clock p. m.

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vs.
SPALDING.

WEDNESDAY, *June 5th*, 1889, June 5th, 1889.

Hearing pursuant to notice.

Present: Mr. Cole, for the complainant, and the defendant in person.

HARVEY SPALDING, the defendant, states:

At the last hearing I submitted or made a statement about an estimate for miscellaneous expenses in the collection of fees in these cases, and also an estimate of the expenses for stationery, printing, etc., in 1888 and in five months of 1889, and also an estimate for some part of the postages. Since then I have made a careful and critical examination of data in my office, and I find, omitting a bill claimed by Mr. Parker which has not been presented for such supplies in 1888, that I expended in the year 1888 for printing, stationery, etc., for this purpose $299.48, and that I expended in the 5 months of 1889 for like purposes $305.36. I withdraw the estimate made for miscellaneons expenses then stated at $2,565.78, and I have made an examination of certain cases on the Mason list, 18 in number, in which in efforts to collect the fees I expended $143.50 in sums of money paid to attorneys, paid for taking depositions, and other necessary expenses incurred in the effort to collect fees in the 18 cases mentioned. I find that the statement about postages for the year 1885 requires a revision and also the postages of 1887 requires a revision. I now fix the amount of postages paid in 1888 at $1,240 and I fix the postages paid in 1889, 5 months, at $518.50. Instead of $750 for postage in 1887 I fix the amount of postage paid in that year at $1,300. Instead of the sum of $1,500 previously stated as postage paid in 1886, being one-half of the whole postage paid at my office, I find that the total postage in that year amounted to about $5,840, one-half of which is $2,920. Instead of $1,000 for one-half of the postage paid in 1885 the one-half of the postage paid in that year should be stated at $1,600.

Mr. COLE: What was it stated at?

A. One-half of the postage paid by me in 1885, which I had previously estimated at $1,000, should be stated at $1,600, the whole postage paid by me that year being about $3,200. One-half of the postage in 1884, stated at $1,000, should be $730. One-half of the postage paid in 1883, stated at $750, should be stated at $865, so that the total postages paid by me from the 3rd of March, 1883, to the present time in the collection of fees in postmaster claims amounts to $9,173.50. These amounts I fix by the number of letters
285 I sent out. I fix the number of letters sent out by the number of envelopes purchased. Out of every dollar of gross fees I have returned as collected from claims upon the Mason list there is or there has necessarily been expended, averaging the whole expense to the whole collections in order to effect such collections, 20 cents. I find that in all the collections made, including the fees on the Mason

list, amount to $165,241 altogether. There has been expended in clerk hire in such collections $15,608.24; in office rent, $2,540; in postage, $9,173.50; in stationery, printing, etc,, $5,863.92; in all, $33,185.66. Then in the item of 18 claims on the Mason list I made special outlays amounting to $142.50.

By Mr. COLE: Complainant's counsel objects to the testimony given by the defendant as irrelevant and improper and as not relating to the matters embraced within the reference, but without waiving the exception he will proceed to cross-examine as to one or two items.

Q. The 18 cases on the Mason list in which you claim to have made some expenditures, were they cases in which fees were collected or in which you failed to make collections?

A. I think in nearly all of these cases we failed to make any collections.

Q. In cases where you expended money in making collections of fees on the Mason list, you have deducted those expenses in the account heretofore filed?

A. That was our intention.

Q. You cannot say what ones of these 18 cases in which you claim to have made the expenditure were the cases in which you succeeded in collecting?

A. I do not think any of them were collected; that is the reason the expenses were not noted previously.

Case closed.

285½ [Endorsed:] 10830. Eq. Mason *vs.* Spalding. Depositions before auditor.

286 *Defendant's Answer to Plaintiff's Exceptions to Defendant's Account of Gross Fees Collected on the "Mason" List.*

Filed April 16, 1889.

In the Supreme Court of the District of Columbia.

GEORGE MASON *vs.* HARVEY SPALDING. } Equity. No. 10830.

The defendant, answering the exceptions of the plaintiff to the statement of account of fees collected heretofore made by the defendant, said exceptions having been filed with the auditor on the 10th of April, 1889, makes the following answer, namely:

Schedule A, herewith presented, is a statement of fees collected by the defendant since he presented said account, and will appear when a supplemental account shall be called for. These fees, amounting to $841.30, which are set forth in the plaintiff's exceptions, were not included in the account stated, because they had not then been collected.

287 Schedule B is a list of fees collected by the defendant, as to which the plaintiff presents exceptions, which were not upon the Mason list. They were claims first entered long afterwards, as a matter of convenience, and accordingly have half numbers, having been interlined by other clerks long after the completion of said list. The fees collected upon this schedule of claims amount to $1,678.48, and they do not belong on the Mason list, and for this reason the defendant made no account of the same.

Schedule E contains a list of fees collected, as claimed by the plaintiff in his bill of exceptions, which he claims should be added to the account as stated by the defendant. The defendant has already made a correct return of the fees collected upon this list of claims. In the case of No. 537 the $207.48 was not a fee, but a gratuity given to the defendant by George Phillips, who was postmaster at Key West, Fla. When the defendant took his claim the contract was for a contingent fee of 25%. There was no good reason for expecting to collect more than $200, and he never
288 was under any obligation to pay me a fee greater than 25%. More than twelve hundred dollars were sent to him, and he sent me as a present $207.48. The fee contracted for has been accounted for by the defendant. In the case of No. 1345 the fee has been already accounted for, but there was an error in the name then given. In the case of No. 533 the $11.11 is a sum of money put into my hands for future service. The amount the plaintiff claims should be accounted for upon this schedule is $398.24, and he is entitled to have no part thereof included in the account.

Schedule F is a list of fees in which the plaintiff in his bill of exceptions claims that the defendant should return a total collection of $395.11 more than was returned in the defendant's account. Upon this list of fees the plaintiff is entitled to an account for $307.09 in addition to the account heretofore rendered. The two fees at the head of the list were overstated in defendant's account $1.22, and the remainder were erroneously understated in the amounts contained in the last column of figures. In No. 1640 the register from which the plaintiff claims a fee of $61.00 exhibits the fact
289 that the total collection was $2.44 and the fee was 61 cents.

Schedule C contains a list of fees which should have been included in defendant's return and which were overlooked or omitted in the hurry of making up that account, and which omission had already been discovered by the defendant and the plaintiff duly notified. They amount to $949.65.

Schedule D is a statement of fees in addition to fees heretofore reported, amounting to $488.74, an account of which the plaintiff is entitled in the several cases mentioned in the schedule, a part of which were wholly omitted previously and a part of which were understated in the amount stated in the last column of figures.

Upon a careful examination of each of the cases stated in the plaintiff's bill of exceptions it is found that the plaintiff is entitled to an account of fees collected in gross of $1,745.48 in addition to those returned in the defendant's account, which was necessarily made up

in great haste and with notice to the plaintiff that errors might be discovered.

The defendant will present as early as practicable a statement of such other errors against either of the parties as may be discovered.

HARVEY SPALDING.

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A.

Schedule of Fees Included in Plaintiff's Exceptions Collected Since Defendant's Account was Rendered.

Filed April 16, 1889.

Page.	No.	Claimant.	Post office.	Date.	A. of A.
3	1359	James O. Beardsley.	Huntingtown, Ind...	Oct. 30, '84	5 00
401	1359	James O. Beardsley.	Huntertown, Ind....	Jan. 3, '89	4 50
566	3248	Wm. F. Weber.....	Hokah, Minn.....	Mar. 30, '89	9 33
571	3371	J. B. Gowan.....	Warsaw, Minn.....	Mar. 30, '89	2 44
586	3708	H. E. Rexrode.....	Long Lane, Mo....	Mar. 29, '89	10 74
587	3733	A. Young.....	Millville, Mo.....	Mar. 26, '89	9 27
613	4202½	J. E. Poinier.....	Franklin, N. J.....	Mar. 18, '89	28 24
625	5159	John L. Moore.....	Shelby, N. C.....	Mar. 23, '89	8 89
628	5557	Hans. Weaver.....	Myrtle Creek, Oregon	Mar. 5, '89	3 67
632	6739	Aaron Johnson.....	Smithfield, Utah....	Mar. 11, '89	11 45
632	6743	John Steele.....	Springfield, Utah ...	Mar. 14, '89	10 46
634	6803	A. F. Putnam.....	Marshfield, Vt.....	Mar. 1, '89	9 10
635	6814	J. H. Cushing.....	Newport, Vt.....	Mar. 19, '89	45 02
635	6818	N. H. Austin.....	North Turnbridge, Vt.	Mar. 2, '89	8 20
635	6840	John L. Pierce.....	So. Londonderry, Vt.	Mar. 7, '89	26 27
636	6879	S. Yates.....	Wolcott, Vt.....	Mar. 7, '89	16 00
647	4483	Jas. H. Goodale.....	Goldenham, N. Y...	Mar. 9, '89	25 00
650	4522	Edgar M. Farrington	East Durham, N. Y.	Mar. 1, '89	14 61
669	4708	John Maxwell.....	Malden, N. Y.....	Mar. 27, '89	9 00
691	4936	Randall A. Brown..	Stevenston, N. Y....	Mar. 9, '89	12 12
722	5325	Mrs. Laura Cummings.	Jelloway, N. Y.....	Mar. 5, '89	8 12
291					
749	5616	Albert G. Gibboney.	Belleville, Pa.....	Mar. 23, '89	24 10
754	5684	James W. Harry....	Conshohocken, Pa...	Feb. 28, '89	48 59
769	5924	Sam'l Hartzell.....	Montgomery Station, Pa.	Mar. 19, '89	31 10
782	6095	Josiah Stowell.....	Sugar Run, Pa.....	Mar. 5, '89	15 77
788	6317	Willis W. Sanders...	Ashland City, Tenn.	Mar. 5, '89	38 83
788	6354	J. P. Drinkland.....	Cumberland Furnace, Tenn.	Mar. 2, '89	20 41
789	6364	Russell P. Goshorn..	Dyersburg, Tenn....	Mar. 12, '89	34 70
789	6369	Geo. W. Morgan	Fayetteville, Tenn...	Feb. 27, '89	36 80
790	6402	C. C. Carpenter.....	Lookout Mountain, Tenn.	Mar. 19, '89	28 68
790	6386	Martin Dill.	Huntingdon, Tenn..	Mar. 7, '89	13 40
794	6538	J. P. Underwood....	Columbia, Texas ...	Mar. 26, '89	5 70
794	6546	M. E. Robert.....	Cotton Gin, Texas...	Mar. 26, '89	33 61
794	6595	James Newman.....	Hockley, Texas	Mar. 5, '89	13 00
794	6605	Donald Campbell ...	Jefferson, Texas.....	Mar. 5, '89	55 70
795	6630	S. N. Walker.....	Moulton, Texas	Mar. 9, '89	1 35
800	7058	J. E. Thomas	Newsom's Depot, Va.	Mar. 6, '89	16 60
801	7136	Stephen G. Darden..	Windsor Station, Va.	Feb. 28, '89	13 53
803	7182	R. S. Hopkins	Elm Grove, Va.....	Mar. 7, '89	5 25
814	7400	Hugo Reuss	Nero, Wis.....	Mar. 16, '89	43 50
806	7230	Madison Vass.....	Red Sulphur Springs, W. Va.	Mar. 23, '89	21 73
810	7306	L. M. Kellogg.....	Edgerton, Wis.....	Mar. 28, '89	61 52
					841 30

292 B.

Filed April 16, 1889.

Page.	No.	Claimant.	Post office.	Date.	A. of A.
3	1340½	Thos. B. Wood	Franklin, Ind	Sept. 1, '84	49 40
5	1501½	Sam'l K. Connor	Troy, Ind	Sept. 16, '84	12 99
10	1645½	H. M. Smith	Enterprise, Iowa	Aug. 25, '84	4 47
14	1686½	G. W. Thorn	Toronto, Iowa	Aug. 25, '84	16 35
14	1916½	J. H. Goodspeed	Winfield, Iowa	Aug. 28, '84	29 82
16	281½	W. W. Yates	Maingonee, Iowa	Sept. 30, '84	91 06
20	170½	W. H. Martin	Evansville, Ark	Ap'l 3, '85	14 02
25	912½	B. Mendenhall	Dallas City, Ills	Ap'l 23, '85	34 55
25	897½	J. R. McChesney	Danbury, Ills	Ap'l 23, '85	7 60
27	1011½	W. Coquelette	La Harpe, Ills	Ap'l 28, '85	16 24
28	1026½	Chester Dyer	Lowell, Ills	June 22, '85	70
28	1058½	J. Dehn	Millstadt, Ills	May 1, '85	31 15
30	1047½	J. Shirey	Redolt, Ills	May 22, '85	16 37
31	1065½	A. R. Rice	Sacramento, Ills	May 4, '85	6 28
35	2028½	Selby Littleton	Paris, Ky	Ap'l 11, '85	13 68
38	2487½	Thos. W. Renshaw	Belfast, Md	Ap'l 11, '85	4 07
45	2915½	Geo. W. Sauter	East Dayton, Mich	Ap'l 22, '85	2 68
47	3089½	Tabius S. Brooke	Rochester, Mich	Ap'l 22, '85	27 24
49	3296½	W. H. Hopkins	Mannenieska, Minn	May 23, '85	37 89
50	3324½	Geo. Sutton	Rose Creek, Minn	May 15, '85	1 29
52	3896½	John B. Twist	Albany, Mo	Ap'l 28, '85	11 04
54	3638½	John Hahn	Hamburg, Mo	May 1, '85	9 80
54	3651½	J. W. Mack	Holden, Mo	May 25, '85	90 84
55	3666½	John Beck	Indian Creek, Mo	May 1, '85	29 64
57	3834	Jas. H. Carr	Louisburg, Mo	Ap'l 28, '85	4 90
59	3980½	Elias Walker	Saltillo, Nebr	Ap'l 18, '85	5 10
65	4283½	B. B. Curry	Pleasant Valley, N. J.	May 8, '85	12 82
					581 99
293					
					581 99
66	4325½	Elias Wight	Weymouth, N. J	Ap'l 28, '85	10 08
66	4086½	S. J. Gibson	New Windsor, Ills	May 6, '85	11 67
71	3431½	Chas. Swazey	Brook Haven, N. Y	May 13, '85	6 10
73	4462½	L. E. Barnett	Chelsea Mills, N. Y	June 3, '85	15 44
76	4528½	P. H. Reid	East New York, N. Y.	May 15, '85	344 00
78	4591½	H. Gillette	Glen Wild, N. Y	May 16, '85	7 22
92	4893½	Geo. R. Kent	Scipioville, N. Y	Oct. 30, '86	6 86
99	5000½	S. W. Bishop	West Hampton, N. Y.	Oct. 2, '86	13 30
103	5005½	L. J. White	West Vienna, N. Y	Oct. 22, '86	21 44
103	5166½	J. C. Anderson	Slatersville, N. C	Nov. 9, '86	5 00
107	5198½	M. Golden	Athens Ohio	Nov. 9, '86	31 41
108	5205½	J. Clarke	Belfast, Ohio	Ap'l 18, '87	7 00
121	5286½	Wm. Siders	Fairfax, Ohio	Dec. 9, '86	4 45
126	5313½	J. W. Winterstein	Harrisonville, Ohio	Nov. 12, '86	4 00
136	5371½	J. D. McDefour	Millers, Ohio	Dec. 11, '86	5 15
146	5434½	J. Stevie	Plain, Ohio	Nov. 10, '86	6 52
147	5436½	Wm. Smith	Portland, Ohio	Dec. 16, '86	19 32
159	5494½	H. S. Vincent	Vincent, Ohio	Nov. 13, '86	4 83
165	5580½	C. R. Roberts	Addison, Pa	Dec. 28, '86	14 01
165	5581½	L. J. Andres	Alba, Pa	Oct. 9, '88	7 82
166	5592½	C. D. Green	Bailey Hollow, Pa	Jan'y 12, '88	3 10
168	5621½	Rob't Peysert	Bethlehem, Pa	Dec. 17, '86	200 00
170	5656½	E. Newman	Canton, Pa	Dec. 22, '86	45 34
179	5720½	F. S. Cowes	East Springfield, Pa.	Jan'y 31, '87	42 19
182	5760½	Jas. Torrence	Gambles, Pa	Dec. 20, '86	1 03
182	5762½	James Gatchell	Gatchelville, Pa	Dec. 26, '86	3 09
182	5771½	John Gardiner	Gibsonburg, Pa	Dec. 28, '86	4 00
184	5788½	Wm. E. Kirk	Norlansberg, Pa	Feb. 14, '87	21 86
					1,448 22

B—Continued.

Page.	No.	Claimant.	Post office.	Date.	A. of A.
294					1,448 22
189	5789½	A. B. Wilson	Ickesburg, Pa.	Jan'y 25, '87	10 00
193	5856½	John Didden	Limestonville, Pa.	Dec. 22, '86	3 26
436	1690½	M. Meacham	Clay, Iowa	Oct. 30, '88	8 75
446	1916½	Jas. H. Goodspeed	Winfield, Iowa	Aug. 9, '88	15 35
466	2148½	J. C. Witt	Big Hill, Ky.	Nov. 28, '88	84
527	2563½	Albert E. Knight	Hardwick, Mass.	Oct. 17, '88	44 23
527	2691½	L. G. Babcock	Lexington, Mass.	Dec. 13, '88	40 03
535	2786½	Geo. H. Gill	Walpole, Mass.	Nov. 22, '88	13 49
601	3964½	V. C. Utley	Nursery Hill, Nev.	Nov. 26, '88	11 86
682	4856½	Burton G. Morse	Red Falls, N. Y.	Jan'y 5, '89	6 65
698	4991½	L. M. Phillips	Wallsville, N. Y.	Feb. 8, '89	48 62
730	5396½	Levi Kilbourn	New London, Ohio	Mar. —, '89	27 18
					1,678 48

295 C.

Filed April 16, 1889.

Page.	No.	Claimant.	Post office.	Date.	Amount.
3	1323	Z. J. Sutton	Dunkirk, Ind.	Nov. 27, '84	4 50
	1585	Wm. D. Manson	Centerville, Iowa	Aug. 21, '84	155 89
24	861	Geo. Williams	Carmi, Ills.	May 4, '85	2 00
50	3371	J. B. Gowan	Warsaw, Minn.	June 22, '85	5 71
65	4270	C. W. Barry	Orange Valley, N. J.	June 29, '85	207 34
72	4457				
80	4810	C. W. Creed	Pelham, N. Y.	Oct. 22, '86	462 33
486	1586	Wm. S. Manson	Centerville, Iowa	Aug. 14, '88	63 00
611	4175	T. E. Gravatt	Clarksburg, N. J.	Jan'y 19, '89	12 23
16	56	Reuben Gibson	Forest Hill, Ind.	Sept. 30, '84	2 47
27	970	J. Weston	Haldane, Ills.	May 27, '85	34 18
					949 65

296 D.

Filed April 16, 1889.

5	1457	Remington, Ind.	.....	19 47	2 00
5	1483	St. Meinrad, Ind.	.....	3 70	3 78
16	1780	Monomonee, Iowa	Sept. 4, '84	26 46	41 16
19	559	South Woodstock, Conn.	Sept. 8, '84	.....	49 26
19	562	Stonington, Conn.	Sept. 5, '84	.....	47 31
19	650	Ocala, Fla.	Sept. 4, '84	.....	12 50
21	310	Knight's Ferry, Cal.	Feb. 11, '85	.....	23 56
33	2034	Lecompton, Kans.	Sept. 3, '85	.....	5 00
38	2550	Ocean, Md.	Ap'l 9, '85	.....	29 46
42	2743	North Chelsea, Mass.	Ap'l 14, '88	.....	6 60
14	5243	Chicago Falls, Ohio	Nov. 13, '86	.....	24 00
45	5424	Eddy's Run, Ohio	May 5, '87	.....	10 00
92	5840	Lander, Pa.	Ap'l 25, '87	.....	5 50
423	1475	Sheelville, Ind.	June 12, '88	45 72	1 00
425	1492	Sugar Branch, Ind.	May 16, '88	.....	1 01
446	1721	Lake City, Iowa	.....	.....	1 00
491	2346	Cape Porpoise, Me.	Nov. 7, '88	.....	27 78
515	2483	Hookstown, Md.	Oct. 11, '88	.....	81 85
534	2734	South Gardiner, Mass.	.....	27 34	5 00
628	6198	Lafayette, R. I.	Mar. 5, '89	.....	27 47
761	5807	Hummelstown, Pa.	J'ly 11, '88	.....	36 01
603	4035	Bennington, N. H.	Dec. 6, '88	.....	28 82
171	5662	Centralia, Pa.	Dec. 11, '86	56 29	18 67
					488 74

297 E.

Filed April 16, 1889.

Page.	No.	Claimant.	Post office.	Date.	A. of A.
2	1277	F. N. Kellogg	Bluffton, Ind.	Aug. 25, '84	6 00
10	1631	David Payne	Doud's Station, Iowa.	Aug. 23, '84	95
21	248	Isaac Calbery	Arcata, Cal.	Ap'l 27, '85	1 00
38	2454	W. F. Johnson	Toppsfield, Me.	May 16, '85	1 00
42	2726	J. R. Jones	North Attleboro', Mass.		
90	4828	L. Smith	Portville, N. Y.	May 31, '87	5 25
105	533	E. T. Tomlinson	Plainville, Conn.	May 25, '85	11 11
108	5208	J. W. Stone	Belpre, Ohio	Mar. 3, '87	34 90
472	2189	Thos. H. Shaw	Fairview, Ky.	Nov. 10, '88	4 65
541	2876	John C. Laing	Cass City, Mich.	Nov. 9, '88	2 00
612	4198	J. K. Smith	Flat Brookville, N. J.	Nov. 24, '88	10 52
767	5888	Julius Sharff	Mast Hope, Pa.	Feb. 13, '89	5 00
4	1439	H. Z. Jenkins	Pennville, Ind.	.....	2 00
				Sept. 5, '84	207 48
19	537	George Phillips	Key West, Fla.	Sept. 1, '85	
21	1667	W. W. Davis	Floris, Iowa	Sept. 4, '84	1 25
18	508	A. E. Hull	Higganum, Conn.	Oct. 10, '84	2 25
72	4457	W. H. Clark	Center Moriches, N. J.	May 22, '85	1 50
3	1345	M. D. Tackette	Greensburg, Ind.	Sept. 26, '84	97 23
37	2449	E. J. Gerry	So. Robinson, Me.	Ap'l 18, '85	4 15
					398 24

298

F.

Filed April 16, 1889.

	Additional amount claimed by plaintiff.		Additional amount accounted for.	
5	$9 28	$30 08	....	.72
1270	2 00	16 58	..	.50
1388	1 96	41 06	1 36	
1414	3 25	2 16	2 16	
1454	35 53	23 68	23 68	
1525	98 75	98 50	98 50	
1542	25 64	25 04	25 04	
1645	62	37	37	
1640	61 00	61	61	
3066	94 49	104 75	94 00	
3105	62 59	89 69	62 59	
	395 11		308 31	
			1 22	
			$307 09	

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ALABAMA.

No.	P. O.	L. P. M.	Claimant.	Address.
1	Athens	Chas. P. Gordon...	.....	Nashville, Tenn.
2	Athens	W. P. Tanner.....	Aug. 18, 1884	Montgomery City.
	A. of A., $	60.28; A. of F., $15.	07; F. coll., 15.07	
3	Attala	Allen Gray		
4	Auburn.....	H. K. Quillin (dec'd).	S. A. Willis, F. G. McElhany, heirs.	Lively, Ala.
5	Auburn..	A. S. Grigg.....		
	A.	of A., 539.54; fee, 3	0.80; May 15, 1884	
7	Bellefonte.....	W. J. Carter.....	Mrs. J. Carter *et al.*	
		A. of A.,	$116.55	
8	Birmingham....	Monroe Sanders....	.....	Corona.
10	Bladen Springs	W. A. Turner.....		
11	Blount Springs	John McAnnally...		
12	Benton.... ..	Arabella K. Walker		
12½	Branchville....	Rebecca B. Newton.	Aug. 18, 1884	Attala.
	A. of	A., 5.17; A. of F., 1	.29; A. of F. coll.,	1.29
13	Brewton.....	John N. Arends...		
	A. of A., 52	.51; A. of F., 13.12;	F. coll., 13.12, Ju	ly 28, 1884
14	Bridgeport.....	J. T. Gilbreath.....	.....	Langston.
16	Benton.....	Mrs. E. A. Burfit..	.....	Salem.
17	Calera.....	Thos. Thompson...	.....	Birmingham.
18	Camden.....	B. Kittrell.....	.....	Gadsden.
19	Camp Hill.....	Gideon Ricks.....	.....	Waverly.
20	Carrollton.....	Sam'l H. Hill.....	Aug. 28, 1884....	
	A. of	A., 89.82; A. of F.,	24.45; F. coll., 22.	45
22	Carthage.....	Malinda M. Meador		
24	Centre....	Sam'l C. Ward.....		
23	Centreville.....	J. W. Owen	Oct. 13, 1884.....	
300		A. of A., 105.02; A.	of F.,26.25; F. coll.,	26.25
25	Centreville	Wade Pippin.....		
		A. of A.	32.39.	
26	Chambers.....	Addie Burk..		
27	Cherokee. ..	Jas. M. Tanner,dec'd	Mrs. N. T., wid..	
	A. of A.,	$57.87; A. of F., 14.	46; F. coll., 14.46;	Aug. 16, '84

ALABAMA—Continued.

No.	P. O.	L. P. M.	Claimant.	Address.
28	Childersburgh	Thos. Childress, dec'd	Mrs. M. Burns, wid	Riverside.
29	Clanton	Alfred Baker		
30	Clinton	F. P. Strother, dec'd A. of A., $49.30;	M. C. & L. S., heirs A. of coll., 12.07;	Aug. 27, '88
31	Collinsville	John Winston		Guntersville.
	A. of A.,	10.07; A. of F., 2.51;	A. of F. coll., 2.51;	Aug. 25, '84
32	Collinsville	N. S. Collins		
	A. of	A., 8.87; A. of F.,	2.21; F. coll., 2.21;	Aug. 18, '84
33	Columbiana	Amos E. Lawrence		
34	Columbia	Sam'l B. Welch		Marianna, Fla.
35	Cowles Station	Thos. J. Jennings		West Point, Ga.
36	Courtland	A. J. Morris		
37	Cross Plains	R. B. Simms		Cave Springs, Ga.
39	Dadeville	Wm. Paige, dec'd	Mary L. Page, wid.	
41	Decatur	Jacob Henry, dec'd.	E. O. Hurd, adm'r.	4 West 3d St., Cinn., Ohio.
42	Demopolis	Alpheus P. French	Aug. 15, '84	623 K N. W., Wash., D. C.
301		A. of A., 38.50; A.	of F., 95.30; F.	coll., 95.30
45	Elyton	Sam. Thompson		Birmingham.
46	Equality	Gaines B. Archer		
47	Eufaula	Mrs. Jane Yarrington, cr. W. A. Hancock.		Midlothian, Texas.
44	Dry Creek	Wm. G. Thrasher		Hillsborough, Ala.
		A. of A., 13.56,	unpaid	
48	Fayette C. H.	K. E. Burris		
49	Florence	Henry W. McVay		
		A. of A., 309.56.		
50	Fort Deposit	Alex. G. Stubbs	Aug. 25, '84	Georgiana.
		A. of A., 34.97; A.	of F., 8.74; F. coll.,	8.74
51	Florence	Josiah Pollock		
53	Gadsden	W. T. Ewing		
	A. of A.,	186.90; A. of F.,	46.72; A. of F. coll.,	46.72; Aug. 18, '84
54	Gainesville	Caleb Parker		Macon, Miss.
		Allowances unpaid		
55	Garland	John Joyner	Sept. 1, '84	
	A. of	A., 85.94; A. of F.,	21.48; F. coll., 21.48	
56	Gaylesville	J. J. N. McConnell, dec'd.	Sallie McConnell, adm'x.	
57	Georgiana	M. O'Brien, dec'd	Barbarba O'Brien, rep.	
		A. of A., 98.36,	unpaid	
59	Greensborough.	Willis Sanborn		
60	Greenville	Margaret E. McKeller.		
61	Guntersville	A. R. Wiggs	T. A. W. *et al.*, heirs	Birmingham.
62	Guntersville	E. C. Lusk		
302				
63	Gurleysville	Calvin McBroom, dec'd.	Josephine McB., rep.	
		A. of A., 54.84,	unpaid	
64	Hatchechubbee	J. M. De Lacy		Greenville, Ga.
		A. of A., 23.00,	unpaid	
66	Jackson	J. R. Carter		
67	Jasper	David H. Little		
68	Jonesborough	E. A. Jones	April 18, '88	Athens.
	A.	of A., 45.92; A. of	F., 11.48; F. coll.,	11.48
70	Livingston	Joseph Peters	Aug. 28, '84	Bassett, Tex.
	A.	of A., 50.62; A. of	F., 12.65; fee coll.,	12.65.

ALABAMA—Continued.

No.	P. O.	L. P. M.	Claimant.	Address.
71	Larkinsville....	C. C. Shelton.....	. ...	Chattanooga, Tenn.
72	Lawrenceville..	G. Lillie, dec'd..... A. of A., 25.67; F.	Mary F. L., wid. coll., 6.27, Oct. 29,	Eufaula. '88
73	Lebanon.....	J. R. Baxter.....		
74	Loachapoka ...	John Daly.....	.....	Cowles Sta.
75	Louisville.....	John Spring.....	.....	Jacksonville.
77	Macon Station.	James A. Styron...	....	Clebourne, Texas.
78	Madison Station.	John W. Bryant...	.....	Chattanooga, Tenn.
79	Marion.....	George W. Brown..	....	Jacksonville, Fla.
80	Midway	Manson Backer, dec'd.	Mary J. Baker, wid.	Midway, Ala.
81	Montevallo	Sam'l S. Holbrook	....	Aldrich.
82	Moulton.	Peter White.....	.....	Bel Green.
83	Moulton..... A.	E. T. Graffenreid... of A., 95.25; A. of	Aug. 25, '84 .... F., 23.81; F. coll.,	23.81
85	Newton.....	Mrs. F. W. Griffith.	.....	Ozark, Ala.
303				
87	Notasulga..... A. of A., 93.59;	John J. Dickson... A. of F., 23.39; F.	coll., 23.39; Aug.	18, '84
88	Opelika.....	R. L. McLelland, dec'd.	Mrs. L. A. McLelland, wid.	
89	Opelika.....	J. A. C. Parker ...	.....	Lively.
90	Orville ..... A.	Ransom Hays, dec'd of A., 92.58; A. of	SallieHays,widow F., 23.14; F. coll.,	Aug. 18, '84. 23.14
92	Ozark ..... A.	James H. Garner, dec'd. of A., 36.89; A. of	S. D. Parker, adm'r. F., 9.22; F. coll.,	June 12, '88 9.10
93	Ozark	Rachel Hughes, dec'd.	Needham Hughes, son.	
94	Pine Apple....	Hiram Hailey.....		
95	Plantersville... A.	Edward D. Crossland. of A., 25.56; A. of	Aug. 30, '84..... F., 6.39; F. coll.,	Selma. 6.39
96	Porterville.....	J. W. Ward..	.....	Brainerd, Minn.
97	Prattville.....	W. H. Hunt.....		
98	Roanoke..... A.	W. E. Connelly.... of A., 69.99; A. of	Aug. 30, '84..... F., 17.49; F. coll.,	Hubbard, Tex. 17.49
99	Rock Mills.....	T. J. Holly, dec'd..	L. A. Holly, rep..	Rock Mills.
100	Rome	Deborah Crawford..		
101	Russellville ... A.	Michael Finney.... of A., 74.19; A. of	Sept. 5, '84, & Aug. 13, '88. F., 18.54; F. coll.,	Newburgh. 18.44
102	Russellville.... A.	John Thompson ... of A., 56.88; A. of	Aug. 21, '84..... F., 14.22; F. coll.,	14.22
304				
103	Rutledge.	J. E. Maura.....	....	Greenville.
106	Scales Station..	Alonzo Ford..... A. of A., 126.06	.. ..	Newton.
108	Shelby Springs.	David A. Barfield..	....	Hickory, Miss.
109	Shorter's Depot. A.	S. C. Cloud..... of A., 37.28; A. of	Aug. 23, '84..... F., 9.32; F. coll.,	9.32
110	Summerfield...	Mrs. E. J. Garrett..	.....	San Fran'co, Cal.
111	Talladega.....	James Lawson.....		
112	Talladega.....	H. C. Bingham ...		
113	Tecumseh	J. R. Wimberly ...	.....	Jenifer.
114	Town Creek ...	A. C. Wade.....	.....	Oxford.
115	Trion.....	Nancy Causey	.....	Vance Station.
116	Troy	M. T. Cade	.....	Armstrong, Texas.

ALABAMA—Continued.

No.	P. O.	L. P. M.	Claimant.	Address.
118	Tuskegee.....	J. P. Fetts, dec'd...	W. W. Fetts, ex'r.	
119	Tuscaloosa.....	Robert Blair, dec'd.	Alice K. Ford, heir	Flint.
120	Union Springs.	J. K. McDonald....	M'ch 16, '88.....	Box 213.
	A.	of A., 293.96; A. of	F., 73.49; F. coll.,	73.49
121	Union Springs.	J. J. McPherson ...	.....	Anniston.
123	Uniontown	Jane Luckett.....	.....	Jemison.
124	Wedowee.....	John Coston.....	.....	Flintville, Tenn.
125	Wilsonville...	David Pennington, dec'd.	Mrs. M. J. Pennington, wid.	
126	York Station...	Calvin Brett.....	.....	Birmingham.

305 Harvey Spalding, being first duly sworn, says that the foregoing is a schedule of the claims in the State of Alabama, within the decree of the court, in the case of Mason against Spalding; that the omitted numbers are the claims within such list in the State of Alabama which were never secured by affiant; and affiant further says that this schedule contains a true account, made up from affiant's records, exhibiting the gross amount of fees collected by affiant upon said claims; and affiant further says that in consequence of the change of the law, depriving affiant of any custody or control of the drafts, he was compelled to enter into a protracted labor and outlay in order to secure guarantees for the payment of fees on such of the claims as allowances might be made, and that after the allowances were made and before payment he was compelled to enter into another large outlay of money and labor to obtain special guarantees for the exact amount of fees due upon the allowances, and that after the payment of allow-
306 ances and at the time of payment a large additional outlay had to be made in clerk hire and in postages and for other purposes, and that all these expenses were greatly enhanced by a circular which the Postmaster General sent to each client to instigate each client to cheat me out of the fee; and affiant says that all these expenses had to be paid out of the gross amount of fees collected, and he verily believes that such expenses were not less than 20 % of the gross amount of fees collected, and that the same upon the fees herein mentioned amounts to $104.91, and that the actual amount of fees collected by affiant is the gross amount exhibited by this schedule, less $104.91; all of which affiant will undertake to show to the satisfaction of the auditor.

HARVEY SPALDING.

DISTRICT OF COLUMBIA, *City of Washington,* } *ss:*

Sworn to and subscribed before me this 5th day of February, 1889.

FRANK B. MARLOW,
Notary Public.

No. of claim.	Name of post office.	Name of claimant.	Date of collection of fee.	Amount of claim collected.	Gross amount of fee collected.
243	Amador City	A. Weil	May 24, 1888	$57 86	$14 45
248	Arcata	Isaac Cullberg	Ap'l 20, 1885	173 34	42 33
267	Cahto	Robert White	Ap'l 27, 1885	63 50	14 00
270	Cedarville	J. H. Bonner	Ap'l 16, 1885	41 60	10 40
272	Cloverdale	Chas. Cook	Ap'l 20, 1888	14 81	3 70
273	Colusia	P. B. Chamberlain, Williams, Cal.	Ap'l 17, 1885	205 04	61 26
275	Danville	Michael Cohen, Martinez, Cal.	Ap'l 30, 1888	32 80	8 20
279	Duncan's Mills	T. Beacom, Sebastopol, Cal.	May 30, 1888	30 98	7 49
285	Ferndale	Ed. J. Dodge, No. 3 Stewart St., San Fran., Cal.	Ap'l 30, 1888	56 92	14 10
293	Goodyear's Bar	O. F. Ackerly	June 5, 1888	9 86	2 46
307	Janesville	L. N. Breed	July 24, 1888	2 80	70
323	Mission San José	J. P. Chamberlain, cor. Army St. & San José Ave., San Francisco, Cal.	Ap'l 26, 1888	214 18	53 19
330	Mormon Island	Thos. Stephenson	Apr. 14, 1885	13 70	3 42
342	Oroville	John J. Smith	Apr. 17, 1885	446 66	111 00
343	Pacheco	M. Barthel, 296 N. 6th St., San José, Cal.	Apr. 27, 1888	43 24	10 60
344	Paso Robles	N. Crocker, 411 Battery, San Fran., Cal.	Apr. 26, 1888	8 53	2 13
308					
354	Red Bluff	W. H. Bahney	Apr. 30, 1888	92 28	22 82
374	San Luis Obispo	A. Murray, dec'd; Mrs. A. Munoz, widow, cr. I. I. Limmler.	Apr. 16, 1885	69 08	17 27
388	Sebastopol	John Dougherty	Apr. 20, 1885	42 10	10 52
392	Smith River	James Brooking	May 5, 1888	31 18	7 50
398	Summit	Simon Scheeline	Apr. 27, 1885	180 26	44 30
404	Sweetland	Benj. Wood	May 1, 1888	12 13	3 03
405	Smartville	T. H. McFadden	Apr. 27, 1888	9 02	2 25
407	Tomales	W. Dutton	May 14, 1888	71 30	17 50
412	Volcano	P. A. Clute	May 13, 1885	279 30	69 57
418	Wheatland	H. Lohse, dec'd; Mrs. H. Lohse, widow, Lincoln, Cal.	June 20, 1888	8 26	2 00
419	Woodland	A. C. Ruggles	Apr. 17, 1885	398 20	99 00
422	Yreka	A. E. Raynes	Apr. 16, 1885	235 18	58 79
423	Yreka	Curtis H. Pyle	Apr. 15, 1885	510 71	127 68
310	Knight's Ferry	Capt. S. S. Hill, Oakdale, Cal.	Feb. 11, 1885 Sept. 1, 1888	94 25 89 50	89 50 22 37
					943 53

309 COLORADO.

No. of claim.	Name of office.	Name of claimant.	Date of collection of fees.	Amount of claim collected.	Gross amount of fee collected.
425	Badito	Chas. O. Unfug, Walsenburg, Col.	Apr. 26, 1888	1 48	37
427	Boulder	R. J. Woodward	Sept. 23, 1884	48 00	12 00
428	Boulder	A. J. Mackey	Sept. 16, 1884	47 66	11 91
440	Evans	W. J. Kram, Brush, Colo.	Apr. 27, 1888	43 53	10 73
465	San Luis	Alcaria Salazor	Aug. 2, 1884	9 70	2 42
447	Fountain	A. H. Terrell	Apr. 27, 1888	40 56	10 14
468	Spring Valley	Joseph Giles, cr. Mrs. Giles.	Sept. 22, 1884	26 50	6 62
452	Granite	Chas. Mater	Apr. 23, 1888	118 60	29 30
					83 49

310 CONNECTICUT.

470	Ansonia	George Bristol, dec'd	Sept. 1, 1884	163 88	40 97
471	Ansonia	Chas. E. Bristol	Sept. 1, 1884	488 78	121 83
			Apr. 17, 1888	122 29	30 32
475	Chaplin	J. W. Lincoln	Apr. 16, 1888	57 88	14 22
479	Cornwall Bridge	C. W. Skiff	Sept. 3, 1884	103 16	25 59
480	Cromwell	Elisha Stevens, Middletown, Conn.	Sept. 13, 1884	270 20	67 55
482	Darien	J. S. Waterbury, Noroton, Conn.	Apr. 19, 1888	178 14	44 28
483	Deep River	Sam'l M. Shipman, dec'd; S. R. Shipman, adm'r'x.	Apr. 21, 1888	455 34	112 50
485	East Berlin	W. W. Dowd, dec'd; Alfred North, adm'r.	May 4, 1888	287 64	71 66
486	East Canaan	William Adams	Sept. 8, 1884	100 28	25 07
488	East Haven	S. Hemmingway	Apr. 24, 1888	76 67	18 92
489	East Lynne	M. W. Comstock, Niantic, Conn.	July —, 1884	37 57	9 40
490	East Putnam	Ezra Parker, dec'd; Mrs. A. Parker, adm'r'x.	May 4, 1888	200 18	49 75
493	Fair Haven	J. D. Howell, dec'd; Mrs. M. M. Howed, widow, 225 Lombard St., New Haven, Conn.	April 24, 1888	1,235 26	308 05
311					
495	Farm's Village	Asabel Case, dec'd; Melinda Case, ex'r.	Sept. 5, 1884	33 22	8 15
496	Farmington	C. D. Cowles, dec'd; R. H. Cowles, adm'r.	Oct. 31, 1884	167 35	37 00
498	Goshen	J. W. Brooks	Apr. 23, 1888	67 98	16 99
500	Greenwich	John Dayton	Apr. 21, 1888	69 85	17 31
504	Hampton	Geo. H. Brown, insane; Wm. Brown, father.		90 54	22 64
506	Hawleyville	D. B. Hawley, dec'd; Olive Hawley, heir, Cuba, N. Y.	Dec. 2, 1884	20 08	5 02

CONNECTICUT—Continued.

No. of claim.	Name of office.	Name of claimant.	Date of collection of fees.	Amount of claim collected.	Gross amount of fee collected.
507	Hazardville	C. G. Tiffany	Apr. 23, 1888	46 89	11 72
508	Higganum	A. E. Hull, Southington, Conn.	Oct. 10, 1884	91 00	20 50
510	Kent	Eaton Burrett, dec'd; Luther Eaton, ex'r.	Oct. 3, 1888	76 20	18 80
511	Killingly	Marcus Wood, Danielsonville, Conn.	Apr. 21, 1888	296 54	73 85
512	Lakeville	T. L. Morton	Sept. 5, 1884	238 08	59 52
			Apr. 21, 1888	156 26	38 80
524	Newington Junction.	Polly Ann Hatch, now Mrs. P. A. Shutleff, Southwick, Mass.	Oct. 16, 1888	82 88	20 57
525	North Haven	Isaac W. Stiles	Sept. 4, 1884	95 32	23 65
530	New Milford	W. B. Allen	Apr. 24, 1888	133 60	22 10
531	Oakville	Mrs. N. T. Warner	Oct. 24, 1888	136 06	34 01
312					
534	Plainfield	Waldo Tillinghast	July 31, 1884	51 46	12 87
541	Robertsville	John Partridge, dec'd; Mary A. Partridge, widow, Lenox Furnace, Mass.	Nov. 1, 1888	39 40	9 70
543	Rocky Hill	Henry J. Smith, dec'd; Ellen Smith, widow.	Sept. 8, 1884	96 96	24 24
544	Rocky Hill	W. H. Webb, dec'd; C. E. Webb and H. S. Webb, heirs.	Sept. 6, 1884	43 97	10 99
549	Southington	E. D. Cook, dec'd; H. S. Ives, adm'r.	Apr. 30, 1888	508 58	126 79
552	Southport	Elizabeth Bradley	Sept. 22, 1884	214 50	53 32
554	South Britain	Anson Bray, dec'd; Spencer H. Bray, 453 W. 43d St., N. Y. city.	Aug. 3, 1888	38 08	9 52
590	Woodville	John Gear	Aug. 1, 1884	25 44	6 36
556	South Manchester	W. H. Cheny	July 17, 1884	167 37	42 84
569	Thomaston	Edward T. Gates	Apr. 21, 1888	222 64	55 00
579	West Haven	E. W. Wilmot	Apr. 20, 1888	84 04	12 48
581	West Winsted	B. F. Marsh	Apr. 24, 1888	522 10	130 17
582	West Winsted	Geo. Dudley, dec'd; Geo. Dudley, adm'r.	Sep. 16, 1884	655 21	163 80
584	Wilton	Edward L. Keeler	Sept. 5, 1884	47 87	11 96
586	Windsor Locks	A. W. Converse	Sept. 4, 1884	101 02	25 10
588	Woodbury	W. E. Woodruff; Wm. Cothren, adm'r.	May 2, 1888	68 74	11 34
					2,077 67

313 Lists from Alabama, California, Colorado, and Connecticut.

Similar statements of claims, of which the above are samples, were filed, giving lists of names, numbers of claims, names of office-, dates of collection, amounts of claims collected, and gross amount of fee collected in nearly all the States and Territories.

314 *Exceptions by Complainant to Auditor's Report.*

Filed Oct. 29, 1889.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } Equity. No. 10830.

And now comes the complainant by his solicitors and excepts to the report of the auditor filed herein on the 30th day of September, 1889, upon the grounds following:

First. For that said account as stated by the auditor in said report covers and includes only a part of the fees and cases in respect to which the complainant is entitled to an accounting as prayed for in complainant's bill in this cause.

Second. For that the auditor in and by the account as stated by him in said report has allowed the defendant credit with the sum of $250, as of the 19th day of May, 1885, to which credit the defendant is not, according to the evidence, entitled.

Third. For that the auditor in the statement of said account did not allow the complainant as a set-off against the account of payments claimed by the defendant to have been made by him to complainant, the following-named items and amounts, to wit:

Nov. 21, 1883, $250 with interest from date.
Dec. 15, 1883, $250 " " " "
M'ch 29, 1884, $100 " " " "
Apr. 8, 1884, $100 " " " "
May *32*, 1884, $100 " " " "

which said several sums of money had been loaned by complainant to defendant, and had not been repaid otherwise than by the several payments claimed by the defendant to have been made by
315 him, and amounting as per his original statement filed with the auditor to $2,460.

For these as well as other errors appearing in said report, the complainant excepts thereto.

COLE & COLE,
Solicitors for Complainant.

Exceptions by Defendant to Auditor's Report.

Filed Oct. 29, 1889.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING. } No. 10830. Equity Docket.

The defendant, Harvey Spalding, excepts in the following particulars to the account filed upon the 30th day of September last by Mr. Auditor Payne:

Exception 1. That he is charged with certain claims which were not secured by himself from the claimants, but were sent to him for prosecution by and on behalf of certain attorneys of such claimants.

Exception 2. That he is charged with any of the claims referred to in the report and testimony as indicated in his books by half numbers.

Exception 3. That he is charged with $207.48 of the fee paid by George Phillips.

Exception 4. That he is not allowed twenty, or some other per cent., or some amount in gross, for expenses in collecting fees.

Exception 5. That he has been charged with interest upon monthly balances, in the manner set forth in the report.

October 29th, 1889.

S. F. PHILLIPS,
For the Defendant.

316 *Decree.*

In the Supreme Court of the District of Columbia, Special Term, Jan'y 4, 1890.

GEORGE MASON
vs.
HARVEY SPALDING. } Equity. No. 10830.

This cause came on at the present term to be heard upon the orders and decrees heretofore made herein, and upon the report of the auditor filed on the 30th day of September, 1889, and the exceptions thereto by both the complainant and the defendant, and was argued by counsel. Upon consideration whereof, it is, this 4th day of January, 1890, ordered, adjudged and decreed that the exceptions of the complainant, as well as the exceptions of the defendant to said auditor's report, and each and all of said exceptions be and the same are hereby overruled, and that the said report be and it is hereby approved, ratified and confirmed. And it is further ordered, adjudged and decreed that the said defendant do pay to the plaintiff the sum of sixteen thousand, three hundred and four dollars and eighty-two cents ($16,304.82), the same being the balance ascertained by the court to be due from the defendant to the complainant according to said report, as of the 1st day of January, 1890, with interest thereon from the last-mentioned date until paid, together with the costs of this suit, to be taxed by the clerk, except the costs of taking the testimony before Albert Harper, and of the examiners of the court, the cost of which is to be paid by each of the parties respectively for whom it was taken.

It is further ordered, adjudged and decreed that the defendant do pay said sum with interest, and the costs as aforesaid to the
317 complainant or his solicitors within twenty days from this date; and should he fail to do so leave is given the complainant to apply to the court for process to enforce this decree. And leave is also reserved to the complainant to apply to the court for

an accounting as to fees collected by the defendant in the class of cases in which the complainant has an interest according to the terms of the former decree herein, subsequent to the time to which the account was stated by the auditor.

W. S. COX, *J.*

318 *Appeal to General Term.*

Filed Jan'y 9, 1890.

GEORGE MASON
vs.
HARVEY SPALDING. } 10830. Equity.

The clerk will please enter my appearance for the defendant in this cause and will also enter an appeal from the decree of the special term of the court rendered Jan'y 4th, 1890.

(Signed) W. WILLOUGHBY,
Sol'r for Defendant.

Appearance and appeal, as ordered, entered Jan'y 9, 1890.
BY THE COURT.

Order Book 11, p. 111.

319 *Order Extending Time for Giving Bond.*

Filed Jan. 11, 1890.

In the Supreme Court of the District of Columbia.

GEO. MASON
vs.
HARVEY SPALDING. } Equity. No. 10830.

On motion of the attorney for the defendant it is, this 11th day of January, 1890, ordered that the time in which defendant may give a supersedeas bond on appeal to general term is extended ten days from this date.

W. S. COX, *J.*

320 *Undertaking for Appeal, &c.*

Filed Jan. 18, 1890.

In the Supreme Court of the District of Columbia, the — Day of ——, 1890.

GEORGE MASON, Plaintiff,
—.
HARVEY SPALDING, Defendant. } No. 10830. Equity.

The defendant having appealed to the general term from the decree pronounced herein on the fourth of January, 1890, in the

equity court, and James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburgh, sureties for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

HARVEY SPALDING, *Appellant.*
JAMES H. SPALDING, *Surety.*
EDWIN W. SPALDING, *Surety.*
JOSEPH C. JOHNSON, *Surety.*
JULIUS LANSBURG, *Surety.*

Approved:
W. S. COX, *J.*

321 *Decree, General Term, Overruling Exceptions, &c.*

Filed July 10, 1891.

In the Supreme Court of the District of Columbia.

GEORGE MASON *vs.* HARVEY SPALDING. } Equity. No. 10830.

This cause came on to be heard at the present term upon the appeals of the respective parties from the decree of the special term passed herein on the 4th day of January, 1890, and was argued by counsel; upon consideration whereof it is, this 10th day of July, 1891, by the court in general term adjudged, ordered, and decreed that the exceptions of the complainant and the first four exceptions of the defendant to the report of the auditor made in this case be, and the same are hereby, overruled, and that the fifth exception thereto by the defendant be, and the same is hereby, sustained; and the court doth further adjudge, order, and decree that the balance due from the defendant to the complainant, as stated in the
322 auditor's report, to wit, the sum of thirteen thousand six hundred and sixty-nine and $\frac{11}{100}$ dollars, should bear interest from the 9th day of August, 1887, until paid, and that the reservation of the right of complainant to apply for a further accounting in this case be stricken out of the said decree of the special term, and that the said decree be, and the same is hereby, modified in the foregoing particulars, and as modified is affirmed. It is therefore further adjudged, ordered, and decreed that the complainant do recover against the defendant, Harvey Spalding, and James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburgh, his sureties, in his undertaking for appeal, the said sum of thirteen thousand six hundred and sixty-nine and $\frac{11}{100}$ dollars, with interest thereon from the 9th day of August, 1887, until paid, and the costs of this suit, except that each party shall pay his own cost of taking evidence before Examiner Harper, and that complainant have exe-

cution thereof as at law; but this decree shall not prejudice
323 any right the complainant may have to ask an accounting in relation to fees, if any, realized by the defendant subsequent to the accounting in this case in any other suit he may be advised to prosecute in relation thereto.

E. F. BINGHAM, *C. J.*

324 *Allowance of Appeal.*

Filed September 8, 1891. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

GEORGE MASON
vs.
HARVEY SPALDING *et al.* } Equity. No. 10830.

And now come Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburgh, by their counsel, W. Willoughby, and pray an appeal to the Supreme Court of the United States from the decree entered in this court in general term in the above-entitled cause on the 10th day of July, 1891, which is allowed, and the appeal bond is fixed at twenty-five thousand dollars.

W. S. COX, *Justice.*

325 In the Supreme Court of the District of Columbia.

Filed the 18th day of September, 1891. R. J. Meigs, clerk.

GEORGE MASON
vs.
HARVEY SPALDING. } No. —.

Know all men by these presents that we, Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, Julius Lansburg, Westel Willoughby, Mills Dean, and Charles Ford, are bound unto the above-named George Mason in the sum of twenty-five thousand dollars, to be paid to the said George Mason, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of September, 1891.

Whereas the above-named Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburg have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-

named Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburg shall prosecute their said appeal to effect and answer all damages and costs if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HARVEY SPALDING. [SEAL.]
JAMES H. SPALDING. [SEAL.]
EDWIN W. SPALDING. [SEAL.]
JOSEPH C. JOHNSON. [SEAL.]
JULIUS LANSBURG. [SEAL.]
WESTEL WILLOUGHBY. [SEAL.]
MILLS DEAN. [SEAL.]
CHARLES FORD. [SEAL.]

Sealed and delivered in presence of—

G. E. LEWIS,
As to Julius Lansburg.
FRANK B. MARLOW,
Notary Public,
Witness as — all signatures except Julius Lansburg.

[NOTARY SEAL.]

Approved:
W. S. COX, *J.*

326 *Citation to the Supreme Court of the United States.*

Filed Sept. 18, 1891. R. J. Meigs, clerk.

The United States of America to George Mason, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the seventeenth day of October next, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia, wherein Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, & Julius Lansburg are appellants and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness Edward F. Bingham, chief justice of the said supreme court of the District of Columbia, in the year of our Lord one thousand eight hundred and ninety-one.

W. S. COX,
Asso. Justice.

I accept service of above citation on this 18th day of Sept., in the year of our Lord one thousand eight hundred and ninety-one.

C. C. COLE,
Sol'r for Compl't.

327 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 18th day of Sept., 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 18th day of Sept., 1891.

E. F. BINGHAM,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 18th day of Sept., 1891.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 14,879. District of Columbia supreme court. Term No., 313. Harvey Spalding, James H. Spalding, Edwin W. Spalding, Joseph C. Johnson, and Julius Lansburgh, appellants, *vs.* George Mason. Filed October 6, 1891.